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**STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

TOWN OF EATONVILLE,
WEYERHAEUSER COMPANY

Defendant[s].

NO. _____

CONSENT DECREE

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	EXHIBIT A	Site Location Diagram
	EXHIBIT B	Cleanup Action Plan
	EXHIBIT C	Schedule

1 **I. INTRODUCTION**

2 1. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology), and the Town of Eatonville (Eatonville) and Weyerhaeuser Company
4 (Weyerhaeuser) (collectively, Defendants) under this Decree is to provide for remedial action
5 at a facility (Exhibit A) where there has been a release or threatened release of hazardous
6 substances. This Decree requires Defendants to implement the preferred remedy as determined
7 by Ecology and as described in the Cleanup Action Plan (Exhibit B).

8 2. Ecology has determined that these actions are necessary to protect human health
9 and the environment.

10 3. The Complaint in this action is being filed simultaneously with this Decree. An
11 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.
12 However, the Parties wish to resolve the issues raised by Ecology’s Complaint. In addition, the
13 Parties agree that settlement of these matters without litigation is reasonable and in the public
14 interest, and that entry of this Decree is the most appropriate means of resolving these matters.

15 4. By signing this Decree, the Parties agree to its entry and agree to be bound by its
16 terms.

17 5. By entering into this Decree, the Parties do not intend to discharge non-settling
18 parties from any liability they may have with respect to matters alleged in the Complaint. The
19 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
20 sums expended under this Decree.

21 6. This Decree shall not be construed as proof of liability or responsibility for any
22 releases of hazardous substances or cost for remedial action nor an admission of any facts;
23 provided, however, that Defendants shall not challenge the authority of the Attorney General
24 and Ecology to enforce this Decree.

25 7. The Court is fully advised of the reasons for entry of this Decree, and good cause
26 having been shown:

1 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

2 **II. JURISDICTION**

3 1. This Court has jurisdiction over the subject matter and over the Parties pursuant
4 to the Model Toxics Control Act (MTCA), RCW 70A.305.

5 2. Authority is conferred upon the Washington State Attorney General by
6 RCW 70A.305.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,
7 after public notice and any required public meeting, Ecology finds the proposed settlement
8 would lead to a more expeditious cleanup of hazardous substances. RCW 70A.305.040(4)(b)
9 requires that such a settlement be entered as a consent decree issued by a court of competent
10 jurisdiction.

11 3. Ecology has determined that a release or threatened release of hazardous
12 substances has occurred at the Site that is the subject of this Decree.

13 4. Ecology has given notice to Defendants of Ecology's determination that
14 Defendants are PLPs for the Site, as required by RCW 70A.305.020(26) and WAC 173-340-500.

15 5. The actions to be taken pursuant to this Decree are necessary to protect public
16 health and the environment.

17 6. This Decree has been subject to public notice and comment.

18 7. Ecology finds that this Decree will lead to a more expeditious cleanup of
19 hazardous substances at the Site in compliance with the cleanup standards established under
20 RCW 70A.305.030(2)(e) and WAC 173-340.

21 8. Defendants have agreed to undertake the actions specified in this Decree and
22 consent to the entry of this Decree under MTCA.

23 **III. PARTIES BOUND**

24 1. This Decree shall apply to and be binding upon the Parties to this Decree, their
25 successors and assigns. The undersigned representative of each party hereby certifies that they
26 are fully authorized to enter into this Decree and to execute and legally bind such party to comply

1 with this Decree. Defendants agree to undertake all actions required by the terms and conditions
2 of this Decree. No change in ownership or corporate status shall alter Defendants' responsibility
3 under this Decree. Defendants shall provide a copy of this Decree to all agents, contractors, and
4 subcontractors retained to perform work required by this Decree, and shall ensure that all work
5 undertaken by such agents, contractors, and subcontractors complies with this Decree.

6 IV. DEFINITIONS

7 1. Unless otherwise specified herein, all definitions in RCW 70A.305.020 and
8 WAC 173-340 shall control the meanings of the terms in this Decree.

9 A. Site: The Site is referred to as the Eatonville Landfill, Cleanup Site ID #
10 15271. The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined by
11 where a hazardous substance, other than a consumer product in consumer use, has been
12 deposited, stored, disposed of, or placed, or otherwise come to be located.

13 B. Consent Decree or Decree: Refers to this Consent Decree and each of the
14 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent
15 Decree.

16 C. Defendants: Refers to the Town of Eatonville and Weyerhaeuser
17 Company.

18 D. Parties: Refers to the State of Washington, Department of Ecology and
19 Defendants.

20 V. FINDINGS OF FACT

21 1. Ecology makes the following findings of fact without any express or implied
22 admissions of such facts by Defendants.

23 A. The Eatonville Landfill, located in Township 16N, Range 4E, Section 20, is
24 approximately 3.5 miles west of the Town of Eatonville (Exhibit A). This Site is
25 accessed by an unpaved road extending approximately 0.6 miles off State Highway 7. The
26

1 landfill footprint covers an area of approximately 2.25 acres including a steep, 1.5H:IV or
2 greater, slope. The parcel on which the landfill is located is owned by Weyerhaeuser and
3 was leased by the Town of Eatonville.

4 **B.** The Eatonville Landfill began operation around November 1, 1950 through a
5 property lease agreement between the Town of Eatonville and Weyerhaeuser. To comply
6 with the Pierce County Solid Waste Management Plan, the site was originally designated
7 for closure in 1976. The landfill was allowed to remain open for four additional years
8 under "sanitary landfill" operating conditions and was closed on March 1, 1980.

9 **C.** During the 30 years of waste deposition, the site was operated and
10 maintained by the Town of Eatonville. From 1950 to 1976 the landfill was operated as an
11 uncontrolled dumpsite. The area surrounding the landfill is owned by Washington State Parks
12 and is slated to be developed as part of the Nisqually State Park.

13 **D.** Seeps and a wetland are present at the toe of the landfill and drain to the
14 Mashel River. Springs have been observed along the northwestern corner of the landfill. In
15 1996, Parametrix collected samples of surface water, including seeps, springs and wetlands.
16 Results indicated concentrations of iron, zinc, and pH exceeding Washington State surface
17 water quality standards (WAC 173-201A).

18 **E.** Tacoma-Pierce County Health Department (TPCHD) conducted a site visit and
19 methane monitoring in the upper portion of the landfill in 2010. TPCHD's Inspection Report
20 indicates methane below the lower explosive limit range, which is consistent with previous
21 TPCHD monitoring results conducted during annual inspections from 1992 through 1998.
22 Based upon its 2010 site visit, the TPCHD concluded that the landfill should be regraded and
23 a soil cover should be applied over the landfill (TPCHD, 2010).

24 **F.** Weyerhaeuser has conducted several investigations over the years, with the
25 following contractors: Parametrix, 1996; EMCON, 1999, 2002; PES Environmental, 2013;
26 and GSI Water Solutions, 2021. The Preliminary Alternative Landfill Cover Rehabilitation

1 Evaluation, Eatonville Landfill investigation (PES, 2013) consisted of excavating 27 test pits
2 to provide additional data for development of landfill closure options.

3 G. Analytical laboratory reports from the January 2021 sampling (GSI 2021)
4 include data from a collection of surface water samples and a shallow groundwater sample
5 from the landfill area, including spring water entering the site from upslope, seeps and
6 wetland at the toe of the landfill, and the creek flowing from the landfill to the Mashel River.
7 No volatile organic compounds (VOCs), including polybrominated diphenyl ether (PBDE)
8 and semi-volatile organic compounds (SVOCs), were detected above method reporting levels
9 in any samples. Metals analysis showed concentrations of lead and zinc.

10 H. In August 2021, the parties entered into Agreed Order DE20072 (Order). The
11 Order required the Town of Eatonville and Weyerhaeuser to conduct a remedial investigation
12 (RI) and feasibility study (FS) to determine the nature and extent of the contamination and to
13 develop and study options for feasible remedial and closure alternatives.

14 I. The RI field efforts included two site-wide sampling events (i.e., a dry-season
15 event and a wet-season event) to evaluate concentrations of releases in multiple media (soil,
16 groundwater, and surface water) in both the landfill and wetland areas. The dry-season event
17 was conducted in September and November 2021, and the wet-season event was conducted in
18 February 2022 to evaluate potential seasonal effects on water quality and
19 groundwater/surface water interactions. A subsequent soil investigation was conducted at
20 additional step-out locations in the wetland in August 2022 to further delineate metals
21 concentrations.

22 J. Other information gathered in 2021 and 2022 included landfill soil gas
23 measurements, geotechnical parameters, geophysical survey, land/elevation survey, wetland
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1 delineation, and an ecological evaluation based on Ecology guidance. The Public Review
2 Draft of the RI Report and FS were submitted to Ecology on April 2, 2024.

3 **K.** Released(s) and/or potential release(s) of hazardous substances occurred at the
4 Site. The following hazardous substances at the Site have been detected at concentrations
5 above MTCA cleanup levels in soil, groundwater, and/or surface water at the Site: Arsenic,
6 cadmium, chromium, copper, iron, hexavalent chromium, lead, nickel, zinc,
7 pentachlorophenol, carcinogenic polycyclic aromatic hydrocarbon, and total petroleum
8 hydrocarbons.

9 **L.** As documented in the Cleanup Action Plan (CAP) (Exhibit B), Ecology has
10 chosen a final cleanup action to be implemented at the Site.

11 **VI. WORK TO BE PERFORMED**

12 1. This Decree contains a program designed to protect human health and the
13 environment from the known release, or threatened release, of hazardous substances at, on, or
14 from the Site. All remedial action(s) conducted by Defendants at the Site shall be done in
15 accordance with WAC 173-340.

16 2. The Defendants shall implement the CAP (Exhibit B) in accordance with the
17 Scope of Work and Schedule attached to this Decree (Exhibit C). Among other remedial actions,
18 the CAP requires Defendants to perform full waste and impacted soil removal from the landfill
19 and restoration of impacted wetlands beneath the waste prism and at the toe of the landfill area,
20 and waste removal, monitored natural attenuation, and institutional controls, if directed by
21 Ecology, for the wetland area .

22 3. All plans or other deliverables submitted by Defendants for Ecology's review and
23 approval under the CAP (Exhibit B) or Scope of Work and Schedule (Exhibit C) shall, upon
24 Ecology's approval, become integral and enforceable parts of this Decree.
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1 4. If Defendants learn of a significant change in conditions at the Site, including but
2 not limited to a statistically significant increase in contaminant and/or chemical concentrations
3 in soil, groundwater, and/or surface water, Defendants, within seven (7) days of learning of the
4 change in condition, shall notify Ecology in writing of said change and provide Ecology with
5 any reports or records (including laboratory analyses, sampling results) relating to the change in
6 conditions.

7 5. Pursuant to WAC 173-340-440(11), if engineered and/or institutional controls are
8 necessary as detailed in the CAP, Defendants shall maintain sufficient and adequate financial
9 assurance mechanisms to cover all costs associated with the operation and maintenance of the
10 remedial action at the Site, including the institutional controls, compliance monitoring, and
11 corrective measures.

12 A. Within sixty (60) days of notice from Ecology that engineered and/or
13 institutional controls are necessary, Defendants shall submit to Ecology for review and
14 approval an estimate of the costs associated with the operation and maintenance of the
15 remedial action at the Site that it will incur in carrying out the terms of this Decree.
16 Within sixty (60) days after Ecology approves the aforementioned cost estimate,
17 Defendants shall provide proof of financial assurances sufficient to cover those costs in
18 a form acceptable to Ecology.

19 B. Defendants shall adjust the financial assurance coverage and provide
20 Ecology's project coordinator with documentation of the updated financial assurance for:

21 i. Inflation, annually, within thirty (30) days of the anniversary date
22 of the entry of this Decree; or if applicable, the modified anniversary date
23 established in accordance with this section, or if applicable, ninety (90) days after
24 the close of Defendant's fiscal year if the financial test or corporate guarantee is
25 used.

1 ii. Changes in cost estimates, within thirty (30) days of issuance of
2 Ecology's approval of a modification or revision to the CAP that result in
3 increases to the cost or expected duration of remedial actions. Any adjustments
4 for inflation since the most recent preceding anniversary date shall be made
5 concurrent with adjustments for changes in cost estimates. The issuance of
6 Ecology's approval of a revised or modified CAP will revise the anniversary date
7 established under this section to become the date of issuance of such revised or
8 modified CAP.

9 C. The Financial Assurance Officer for Ecology shall work with the project
10 coordinators to review and approve financial assurance coverage pursuant to this Decree
11 and make determinations on any adjustments necessary based on the annual reporting.
12 As of the execution date of this Decree, Ecology's Financial Assurance Officer is Joanna
13 Richards, 360-485-5992 or Joanna.Richards@ecy.wa.gov.

14 6. As detailed in the CAP, institutional controls may be necessary at the Site.
15 Environmental (Restrictive) Covenants may be used to implement the institutional controls, if
16 required.

17 A. In consultation with Defendants, Ecology will prepare the Environmental
18 (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any
19 policies or procedures specified by Ecology. The Environmental (Restrictive) Covenants
20 shall restrict future activities and uses of the Site as agreed to by Ecology and Defendants.

21 B. After approval by Ecology, Defendants shall record the Environmental
22 (Restrictive) Covenant for affected properties it owns with the office of the Pierce County
23 Auditor as detailed in the Schedule (Exhibit C). Defendants shall provide Ecology with
24 the original recorded Environmental (Restrictive) Covenants within thirty (30) days of
25 the recording date.
26

1 C. As detailed in the CAP, as part of the remedial action for the Site,
2 institutional controls may be required on properties not owned by Defendants.
3 Defendants will ensure that the owner of each affected property records an Ecology-
4 approved Environmental (Restrictive) Covenant as detailed in the Schedule (Exhibit C).
5 Upon a showing that Defendants have made a good faith effort to secure an
6 Environmental (Restrictive) Covenant for an affected property and failed to do so,
7 Ecology may provide assistance to Defendants.

8 7. Unless otherwise directed by Ecology, Defendants shall submit to Ecology
9 written Progress Reports that describe the actions taken during the previous period to implement
10 the requirements of this Decree. The Progress Reports are required to be submitted monthly
11 during active construction of the cleanup action. Progress Reports will be due quarterly when
12 the remedial action is in the compliance monitoring phase. All Progress Reports shall be
13 submitted by the tenth (10th) day of the month in which they are due after the effective date of
14 this Decree. Unless otherwise specified in writing by Ecology, Progress Reports and any other
15 documents submitted pursuant to this Decree shall be sent by electronic mail to Ecology's
16 project coordinator. The Progress Reports shall include the following:

- 17 A. A list of on-site activities that have taken place during the month.
18 B. Description of any sample results which deviate from the norm.
19 C. Detailed description of any deviations from required tasks not otherwise
20 documented in project plans or amendment requests.
21 D. Description of all deviations from the Scope of Work and Schedule
22 (Exhibit C) during the current month and any planned deviations in the upcoming month.
23 E. For any deviations in schedule, a plan for recovering lost time and
24 maintaining compliance with the schedule.
25
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1 F. All raw data (including laboratory analyses) received during the previous
2 quarter (if not previously submitted to Ecology), together with a detailed description of
3 the underlying samples collected.

4 G. A list of planned activities for the upcoming month.

5 8. Except in the case of an emergency, Defendants agree not to perform any
6 remedial actions at the Site outside the scope of this Decree without prior written approval of
7 Ecology. In the case of an emergency, Defendants must notify Ecology of the event and remedial
8 action(s) as soon as practical, but no later than twenty-four (24) hours after discovery of the
9 emergency.

10 VII. DESIGNATED PROJECT COORDINATORS

11 1. The project coordinator for Ecology is:

12 Sam Meng
13 300 Desmond Drive SE
14 Lacey, WA 98503
15 (360) 999-9587
16 Sam.meng@ecy.wa.gov

17 2. The project coordinator for Defendants is:

18 Luke Thies
19 Weyerhaeuser Company
20 105 Mills Drive
21 Columbia Falls, MT 599912
22 (406) 897-8010
23 Luke.thies@weyerhaeuser.com

24 3. Each project coordinator shall be responsible for overseeing the implementation
25 of this Decree. Ecology's project coordinator will be Ecology's designated representative for the
26 Site. To the maximum extent possible, communications between Ecology and Defendants and
all documents, including reports, approvals, and other correspondence concerning the activities
performed pursuant to the terms and conditions of this Decree shall be directed through the
project coordinators. The project coordinators may designate, in writing, working level staff

1 contacts for all or portions of the implementation of the work to be performed required by this
2 Decree.

3 4. Any party may change its respective project coordinator. Written notification
4 shall be given to the other party at least ten (10) calendar days prior to the change.

5 **VIII. PERFORMANCE**

6 1. Except as otherwise provided for by RCW 18.43 and 18.220, all geologic and
7 hydrogeologic work performed pursuant to this Decree shall be under the supervision and
8 direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct
9 supervision of an engineer registered by the State of Washington.

10 2. Except as otherwise provided for by RCW 18.43.130, all engineering work
11 performed pursuant to this Decree shall be under the direct supervision of a professional engineer
12 registered by the State of Washington.

13 3. Except as otherwise provided for by RCW 18.43.130, all construction work
14 performed pursuant to this Decree shall be under the direct supervision of a professional engineer
15 registered by the State of Washington or a qualified technician under the direct supervision of a
16 professional engineer registered by the State of Washington.

17 4. As required by RCW 18.43 and 18.220, any documents submitted containing
18 geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed
19 professional.

20 5. Defendants shall notify Ecology in writing of the identity of any engineer(s) and
21 geologist(s), contractor(s) and subcontractor(s), and other key personnel to be used in carrying
22 out the terms of this Decree, in advance of their involvement at the Site.

23 **IX. ACCESS**

24 1. Ecology or any Ecology authorized representative shall have access to enter and
25 freely move about all property at the Site that Defendants either own, control, or have access
26 rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs,

1 and contracts related to the work being performed pursuant to this Decree; reviewing
2 Defendants' progress in carrying out the terms of this Decree; conducting such tests or collecting
3 such samples as Ecology may deem necessary; using a camera, sound recording, or other
4 documentary type equipment to record work done pursuant to this Decree; and verifying the data
5 submitted to Ecology by Defendants.

6 2. Nothing in this Decree is intended by the Defendants to waive any right it may
7 have under applicable law to limit disclosure of documents protected by the attorney work-
8 product privilege and/or the attorney-client privilege. If either Defendant withholds any
9 requested records based on an assertion of privilege, it shall provide Ecology with a privilege
10 log specifying the records withheld and the applicable privilege. No Site-related data collected
11 pursuant to this Decree shall be considered privileged.

12 3. Defendants shall make all reasonable efforts to secure access rights for those
13 properties within the Site not owned or controlled by Defendants where remedial activities or
14 investigations will be performed pursuant to this Decree.

15 4. Ecology or any Ecology authorized representative shall give reasonable notice
16 before entering any Site property owned or controlled by Defendants unless an emergency
17 prevents such notice. All Parties who access the Site pursuant to this section shall comply with
18 any applicable health and safety plan(s). Ecology employees and their representatives shall not
19 be required to sign any liability release or waiver as a condition of Site property access.

20 X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY

21 1. With respect to the implementation of this Decree, Defendants shall make the
22 results of all sampling, laboratory reports, and/or test results generated by it or on its behalf
23 available to Ecology by submitting data as detailed in this section. Pursuant to WAC 173-340-
24 840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in
25 accordance with paragraph 8 of Section VI (Work to be Performed), Ecology's Toxics Cleanup
26

1 Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified
2 by Ecology for data submittal.

3 2. If requested by Ecology, Defendants shall allow Ecology and/or its authorized
4 representative to take split or duplicate samples of any samples collected by Defendants pursuant
5 to the implementation of this Decree. Defendants shall notify Ecology seven (7) days in advance
6 of any sample collection or work activity at the Site. Ecology shall, upon request, allow
7 Defendants and/or their authorized representative to take split or duplicate samples of any
8 samples collected by Ecology pursuant to the implementation of this Decree, provided that doing
9 so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under
10 Section IX (Access), Ecology shall notify Defendants prior to any sample collection activity
11 unless an emergency prevents such notice.

12 3. In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses
13 shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be
14 conducted, unless otherwise approved by Ecology.

15 XI. ACCESS TO INFORMATION

16 1. Defendants shall provide to Ecology, upon request, copies of all records, reports,
17 documents, and other information (including records, reports, documents, and other information
18 in electronic form) (hereinafter referred to as "Records") within Defendants' possession or
19 control or that of their contractors or agents relating to activities at the Site or to the
20 implementation of this Decree, including, but not limited to, sampling, analysis, chain of custody
21 records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or
22 other documents or information regarding the work. Defendants shall also make available to
23 Ecology, for purposes of investigation, information gathering, or testimony, their employees,
24 agents, or representatives with knowledge of relevant facts concerning the performance of the
25 work.
26

1 2. Nothing in this Decree is intended to waive any right Defendants may have under
2 applicable law to limit disclosure of Records protected by the attorney work-product privilege
3 and/or the attorney-client privilege. If either Defendant withholds any requested Records based
4 on an assertion of privilege, Defendants shall provide Ecology with a privilege log specifying
5 the Records withheld and the applicable privilege. No Site-related data collected pursuant to this
6 Decree shall be considered privileged, including: (1) any data regarding the Site, including, but
7 not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical,
8 radiological, biological, or engineering data, or the portion of any other record that evidences
9 conditions at or around the Site; or (2) the portion of any Record that Defendants are required to
10 create or generate pursuant to this Order.

11 3. Notwithstanding any provision of this Order, Ecology retains all of its
12 information gathering and inspection authorities and rights, including enforcement actions
13 related thereto, under any other applicable statutes or regulations.

14 **XII. RETENTION OF RECORDS**

15 1. During the pendency of this Decree, and for ten (10) years from the date this
16 Decree is no longer in effect as provided in Section XXVI (Duration of Decree), Defendants
17 shall preserve all records, reports, documents, and underlying data in its possession relevant to
18 the implementation of this Decree and shall insert a similar record retention requirement into all
19 contracts with project contractors and subcontractors. Upon request of Ecology, Defendants shall
20 make all records available to Ecology and allow access for review within a reasonable time.

21 **XIII. TRANSFER OF INTEREST IN PROPERTY**

22 1. No voluntary conveyance or relinquishment of title, easement, leasehold, or other
23 interest in any portion of the Site shall be consummated by Defendants without provision for
24 continued operation and maintenance of any containment system, treatment system, and/or
25 monitoring system installed or implemented pursuant to this Decree.
26

1 statement of dispute setting forth: the nature of the dispute; the disputing Party's position
2 with respect to the dispute; and the information relied upon to support its position.

3 D. The Section Manager shall conduct a review of the dispute and shall issue
4 a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar
5 days of receipt of the Formal Dispute Notice.

6 E. If Defendants find Ecology's Regional Section Manager's decision of the
7 disputed matter unacceptable, Defendants may then request final management review of
8 that decision. Defendants must submit this request (Final Review Request) in writing to
9 the Toxics Cleanup Program Manager within seven (7) calendar days of Defendants'
10 receipt of the Decision on Dispute. The Final Review Request shall include a written
11 statement of dispute setting forth: the nature of the dispute; the disputing Defendant's
12 position with respect to the dispute; and the information relied upon to support its
13 position.

14 F. Ecology's Toxics Cleanup Program Manager shall conduct a review of
15 the dispute and shall issue a written decision regarding the dispute (Final Decision on
16 Dispute) within thirty (30) calendar days of receipt of the Final Review Request. The
17 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the
18 disputed matter.

19 2. If Ecology's Final Decision on Dispute is unacceptable to Defendants,
20 Defendants have the right to submit the dispute to the Court for resolution. The Parties agree that
21 one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute
22 arising under this Decree. Under RCW 70A.305.070, Ecology's investigative and remedial
23 decisions shall be upheld unless they are arbitrary and capricious.

24 3. The Parties agree to only utilize the dispute resolution process in good faith and
25 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
26

1 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
2 the other party may seek sanctions.

3 4. Implementation of these dispute resolution procedures shall not provide a basis
4 for delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule
5 extension or the Court so orders.

6 5. In case of a dispute, failure to either proceed with the work required by this
7 Decree or timely invoke dispute resolution may result in Ecology's determination that
8 insufficient progress is being made in preparation of a deliverable, and may result in Ecology
9 undertaking the work under Section XXIII (Implementation of Remedial Action).

10 **XV. AMENDMENT OF DECREE**

11 1. The Parties may agree to minor changes to the work to be performed without
12 formally amending this Decree. Minor changes will be documented in writing by Ecology.

13 2. Substantial changes to the work to be performed shall require formal amendment
14 of this Decree. This Decree may only be formally amended by a written stipulation among the
15 Parties that is entered by the Court, or by order of the Court. Ecology will provide its written
16 consent to a formal amendment only after public notice and opportunity to comment on the
17 formal amendment. Such amendment shall become effective upon entry by the Court.
18 Agreement to amend the Decree shall not be unreasonably withheld by any party.

19 3. When requesting a change to the Decree, Defendants shall submit a written
20 request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing
21 and in a timely manner after the written request is received. If Ecology determines that the
22 change is substantial, then the Decree must be formally amended. Reasons for the disapproval
23 of a proposed change to this Decree shall be stated in writing. If Ecology does not agree to the
24 requested change, the disagreement may be addressed through the dispute resolution procedures
25 described in Section XII (Resolution of Disputes).
26

1 **XVI. EXTENSION OF SCHEDULE**

2 1. Defendant’s request for an extension of schedule shall be granted only when a
3 request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior
4 to expiration of the deadline for which the extension is requested, and good cause exists for
5 granting the extension. All extensions shall be requested in writing. The request shall specify:

- 6 A. The deadline that is sought to be extended.
- 7 B. The length of the extension sought.
- 8 C. The reason(s) for the extension.
- 9 D. Any related deadline or schedule that would be affected if the extension
10 were granted.

11 2. The burden shall be on Defendants to demonstrate to the satisfaction of Ecology
12 that the request for such extension has been submitted in a timely fashion and that good cause
13 exists for granting the extension. Good cause may include, but may not be limited to:

- 14 A. Circumstances beyond the reasonable control and despite the due
15 diligence of Defendants including delays caused by unrelated third parties or Ecology,
16 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying
17 documents submitted by Defendants.
- 18 B. A shelter in place or work stoppage mandated by state or local
19 government order due to public health and safety emergencies.
- 20 C. Acts of God, including fire, flood, blizzard, extreme temperatures, storm,
21 or other unavoidable casualty.
- 22 D. Endangerment as described in Section XVII (Endangerment).

23 3. However, neither increased costs of performance of the terms of this Decree nor
24 changed economic circumstances shall be considered circumstances beyond the reasonable
25 control of Defendants.
26

1 Ecology disagrees with Defendant's cessation of activities, it may direct Defendants to resume
2 such activities.

3 3. If Ecology concurs with or orders a work stoppage pursuant to this section,
4 Defendant's obligations with respect to the ceased activities shall be suspended until Ecology
5 determines the danger is abated, and the time for performance of such activities, as well as the
6 time for any other work dependent upon such activities, shall be extended, in accordance with
7 Section XVI (Extension of Schedule), for such period of time as Ecology determines is
8 reasonable under the circumstances.

9 4. Nothing in this Decree shall limit the authority of Ecology, its employees, agents,
10 or contractors to take or require appropriate action in the event of an emergency.

11 **XVIII. COVENANT NOT TO SUE**

12 1. Covenant Not to Sue: In consideration of Defendant's compliance with the terms
13 and conditions of this Decree, Ecology covenants not to institute legal or administrative actions
14 against Defendants regarding the release or threatened release of hazardous substances at the
15 Site, as described in Section V (Findings of Fact). This Covenant Not to Sue does not cover any
16 other hazardous substance(s) or area. Ecology retains all of its authority relative to any hazardous
17 substance(s) or area not covered by this Decree.

18 This Covenant Not to Sue shall have no applicability whatsoever to:

19 A. Criminal liability.

20 B. Liability for damages to natural resources.

21 C. Any Ecology action, including cost recovery, against PLPs not a party to
22 this Decree.

23 2. Pursuant to RCW 70A.305.040(4)(c), the Court shall amend this Covenant Not
24 to Sue if factors not known at the time of entry of this Decree are discovered and present a
25 previously unknown threat to human health or the environment.

1 **XX. INDEMNIFICATION**

2 1. Defendants agree to indemnify and save and hold the State of Washington, its
3 employees, and agents harmless from any and all claims or causes of action (1) for death or
4 injuries to persons, or (2) for loss or damage to property to the extent arising from or on account
5 of acts or omissions of Defendants, their officers, employees, agents, or contractors in entering
6 into and implementing this Decree. However, Defendants shall not indemnify the State of
7 Washington nor save nor hold its employees and agents harmless from any claims or causes of
8 action to the extent arising out of the negligent acts or omissions of the State of Washington, or
9 the employees or agents of the State, in entering into or implementing this Decree.

10 **XXI. COMPLIANCE WITH APPLICABLE LAWS**

11 1. *Applicable Law.* All actions carried out by Defendants pursuant to this Decree
12 shall be done in accordance with all applicable federal, state, and local requirements, including
13 requirements to obtain necessary permits, except as provided in RCW 70A.305.090. The permits
14 or specific federal, state, or local requirements that the agency has determined are applicable and
15 that are known at the time of the execution of this Decree have been identified in the CAP,
16 Exhibit B. Defendants have a continuing obligation to identify additional applicable federal,
17 state, and local requirements which apply to actions carried out pursuant to this Decree, and to
18 comply with those requirements. As additional federal, state, and local requirements are
19 identified by Ecology or the Defendants, Ecology will document in writing if they are applicable
20 to actions carried out pursuant to this Decree, and the Defendants must implement those
21 requirements.

22 2. *Relevant and Appropriate Requirements.* All actions carried out by Defendants
23 pursuant to this Decree shall be done in accordance with relevant and appropriate requirements
24 identified by Ecology. The relevant and appropriate requirements that Ecology has determined
25 apply have been identified in the CAP, Exhibit B. If additional relevant and appropriate
26 requirements are identified by Ecology or the Defendants, Ecology will document in writing if

1 they are applicable to actions carried out pursuant to this Decree and the Defendants must
2 implement those requirements.

3 3. Pursuant to RCW 70A.305.090(1), Defendants may be exempt from the
4 procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of
5 any laws requiring or authorizing local government permits or approvals. However, Defendants
6 shall comply with the substantive requirements of such permits or approvals. For permits and
7 approvals covered under RCW 70A.305.090(1) that have been issued by local government, the
8 Parties agree that Ecology has the non-exclusive ability under this Decree to enforce those local
9 government permits and/or approvals. At this time, no state or local permits or approvals have
10 been identified as being applicable but procedurally exempt under this section.

11 4. Defendants have a continuing obligation to determine whether additional permits
12 or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial
13 action under this Decree. In the event either Ecology or Defendants determine that additional
14 permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the
15 remedial action under this Decree, it shall promptly notify the other party of its determination.
16 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the
17 appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly consult
18 with the appropriate state and/or local agencies and provide Ecology with written documentation
19 from those agencies of the substantive requirements those agencies believe are applicable to the
20 remedial action. Ecology shall make the final determination on the additional substantive
21 requirements that must be met by Defendants and on how Defendants must meet those
22 requirements. Ecology shall inform Defendants in writing of these requirements. Once
23 established by Ecology, the additional requirements shall be enforceable requirements of this
24 Decree. Defendants shall not begin or continue the remedial action potentially subject to the
25 additional requirements until Ecology makes its final determination.
26

1 **XXV. PUBLIC PARTICIPATION**

2 1. Ecology shall maintain the responsibility for public participation at the Site.
3 However, Defendants shall cooperate with Ecology, and shall:

4 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts
5 of public notices and fact sheets at important stages of the remedial action, such as the
6 submission of work plans, remedial investigation/feasibility study reports, cleanup action
7 plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and
8 distribute such fact sheets and prepare and distribute public notices of Ecology’s
9 presentations and meetings.

10 B. Notify Ecology’s project coordinator prior to the preparation of all press
11 releases and fact sheets, and before meetings related to remedial action work to be
12 performed at the Site with the interested public and/or local governments. Likewise,
13 Ecology shall notify Defendants prior to the issuance of all press releases and fact sheets
14 related to remedial action work to be performed at the Site, and before meetings related
15 to remedial action work to be performed at the Site with the interested public and/or local
16 governments. For all press releases, fact sheets, meetings, and other outreach efforts by
17 Defendants that do not receive prior Ecology approval, Defendants shall clearly indicate
18 to its audience that the press release, fact sheet, meeting, or other outreach effort was not
19 sponsored or endorsed by Ecology.

20 C. When requested by Ecology, participate in public presentations on the
21 progress of the remedial action at the Site. Participation may be through attendance at
22 public meetings to assist in answering questions, or as a presenter.

23 E. When requested by Ecology, arrange and/or continue information
24 repositories at the following location:

- 25 i. Eatonville Pierce County Library.
26 205 Center St. W. Eatonville, WA 98328.

1 At a minimum, copies of all public notices, fact sheets, and documents relating to public
2 comment periods shall be promptly placed in this repository. A copy of all documents
3 related to this Site shall be maintained at Ecology's Southwest Region Office in Olympia,
4 Washington.

5 **XXVI. DURATION OF DECREE**

6 1. The remedial program required pursuant to this Decree shall be maintained and
7 continued until Defendants have received written notification from Ecology that the
8 requirements of this Decree have been satisfactorily completed. This Decree shall remain in
9 effect until dismissed by the Court. When dismissed, Section XII (Retention of Records),
10 Section XVIII (Covenant Not to Sue), Section XIX (Contribution Protection), Section XX
11 (Indemnification), and Section XXVII (Claims against the State) shall survive.

12 **XXVII. CLAIMS AGAINST THE STATE**

13 1. Defendants hereby agree that they will not seek to recover any costs accrued in
14 implementing the remedial action required by this Decree from the State of Washington or any
15 of its agencies; and further, that Defendants will make no claim against the State Toxics Control
16 Account, the Local Toxics Control Account, the Environmental Legacy Stewardship Account,
17 or a MTCA Cleanup Settlement Account for any costs incurred in implementing this Decree.
18 Except as provided above, however, Defendants expressly reserve their right to seek to recover
19 any costs incurred in implementing this Decree from any other PLP. This section does not limit
20 or address funding that may be provided under WAC 173-322A.

21 **XXVIII. EFFECTIVE DATE**

22 1. This Decree is effective upon the date it is entered by the Court.

23 **XXIX. WITHDRAWAL OF CONSENT**

24 1. If the Court withholds or withdraws its consent to this Decree, it shall be null and
25 void at the option of any party and the accompanying Complaint shall be dismissed without costs
26

1 and without prejudice. In such an event, no party shall be bound by the requirements of this
2 Decree.

3
4 STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

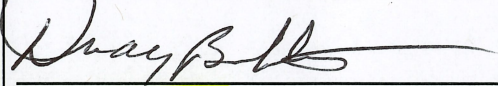
5
6 BARRY ROGOWSKI
Program Manager
7 Toxics Cleanup Program
(360) 407-7170

KATHRYN WYATT, WSBA #30916
Assistant Attorney General
(360) 586-3514

8 Date: _____

Date: _____

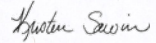
9
10 TOWN OF EATONVILLE

11 

12 David Baublits
13 Mayor
(360) 832-3361

14 Date: 8/13/24

15 WEYERHAEUSER COMPANY

16 

17 Kristen Sawin
18 Vice President, Corporate and Government Affairs
(206) 539-3000

19 Date: 8/14/2024

20
21 ENTERED this _____ day of _____ 20____.

22
23
24 JUDGE
25 Pierce County Superior Court
26

Exhibit A

EXHIBIT A
Eatonville Landfill
Agreed Order 20072

SITE LOCATION FIGURE

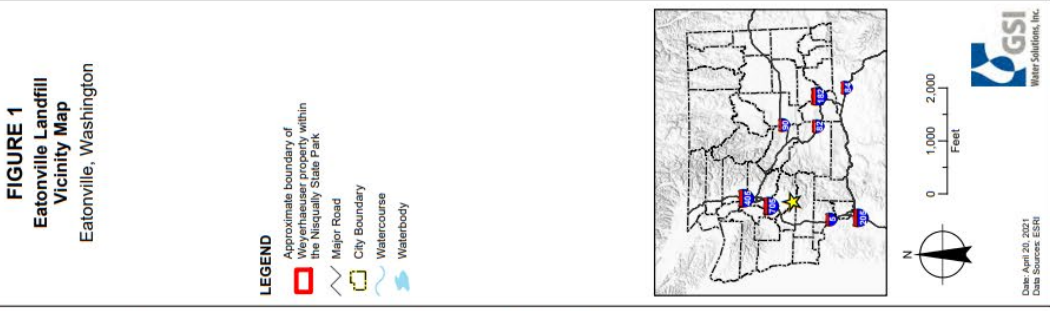
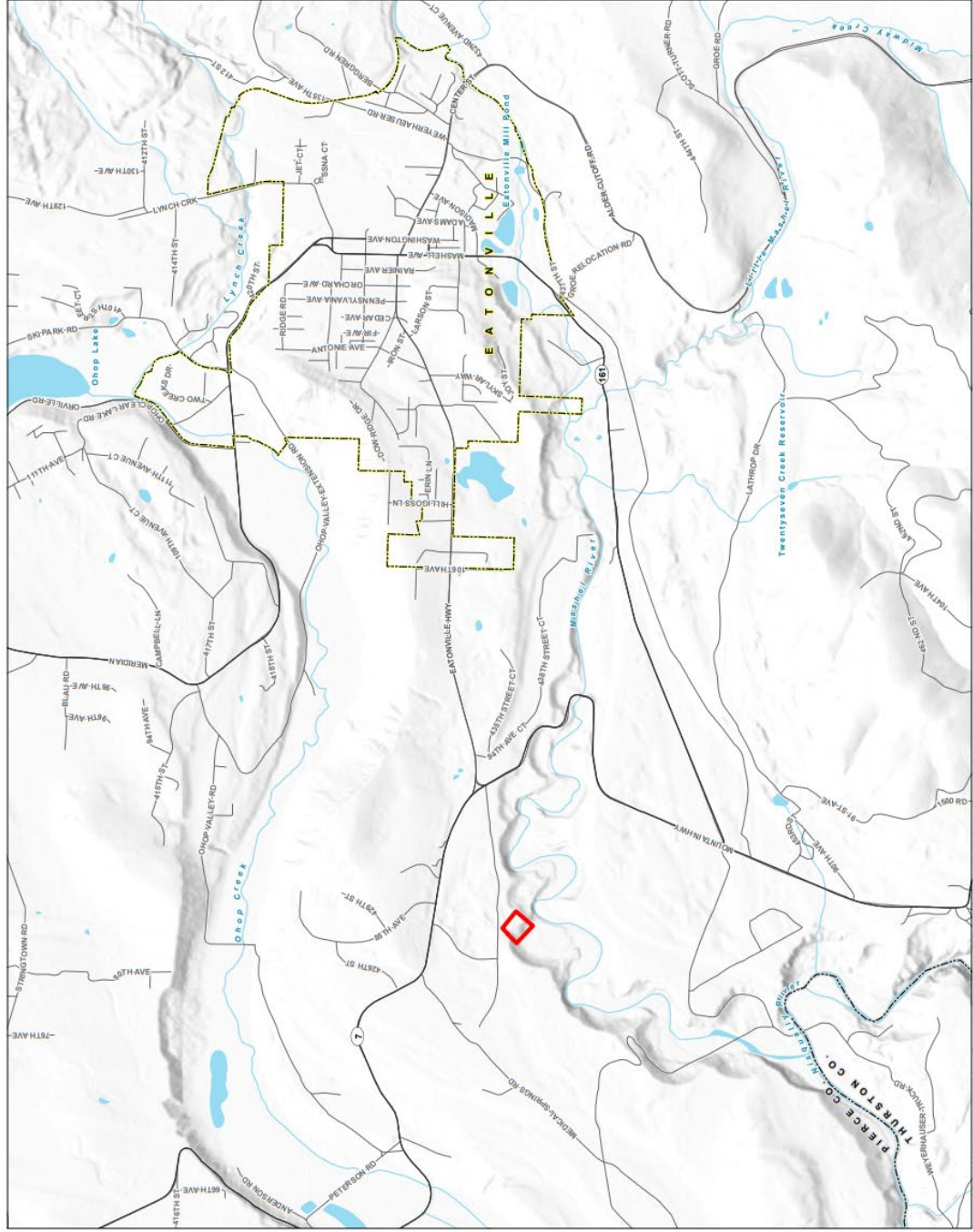


Exhibit B

Exhibit C

Exhibit C
SCHEDULE of DELIVERABLES

The schedule for deliverables is presented below and is in calendar days. If the date for the Defendants' submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Where a deliverable due date is triggered by Ecology notification, comments, or approval, the starting date for the period shown is the date the Defendants received such notification, comments, or approval from Ecology. Schedule extensions granted pursuant to Section XV.1 shall be minor changes documented in writing without formally amending this Decree.

Task	Deliverables	Due Date
A. Administrative		
A.1	Progress reports	Monthly on the 10th of the month beginning after the effective date of the Consent Decree until completion of active construction, and thereafter quarterly.
B. Design¹		
B. 1	Draft Engineering Design Report (EDR) per WAC 173-340-400(4)(a)	90 days from the effective date of the Consent Decree
B.2	Final EDR	60 days from the receipt of Ecology comments on the draft EDR
B.3	100% Construction Plans and Specifications (Plans and Specs) per WAC 173-340-400(4)(b)	Within 90 days after receipt of all required permits
C. Construction		
C.1	Construction procurement	Within 160 days after Ecology's acceptance of the 100% Plans and Specs (B.3)

¹ Required permits and approvals and the substantive requirements of procedurally exempt permits or approvals shall be obtained, and their requirements incorporated into the design, as applicable.

C.2	Construction	Within the period authorized by the required permits
D. Post Construction Work		
D.1	Draft Construction Completion Report (CCR), including As Built Drawings and an Operation, Maintenance, and Monitoring Plan (OMMP)	Within 120 days of completion of construction (C.2)
D.2	Final CCR, including As Built Drawings and an OMMP	Within 60 days of receipt of Ecology comments on Draft As Built Drawings and Report (D.1)
D.3	Draft Environmental Covenant(s)	Within 30 days of Ecology approval of Final As Built Drawings and Report (D.2)
D.4	Final Environmental Covenant(s)	Within 30 days of receipt of Ecology comments on Draft Environmental Covenants Environmental Covenant(s) (D.3)
D.5	Record Covenant(s)	Within 60 days of Ecology approval of Final Environmental Covenant(s) (D.4)
D.6	Compliance Monitoring Reports	As detailed in the OMMP (D.2)