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STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON DEPARTMENT
OF ECOLOGY,

Plaintiff,

v.

HOUSING AUTHORITY OF THE CITY OF
EVERETT,

Defendant.

No. **04 2 12170 0**

PROSPECTIVE PURCHASER
CONSENT DECREE RE: FENCED
AREA, EVERETT SMELTER SITE,
EVERETT, WASHINGTON

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PROSPECTIVE PURCHASER: CONSENT DECREE RE: FENCED
AREA, EVERETT SMELTER SITE

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2 **EXHIBITS**

- 3 EXHIBIT A. Legal Description of Asarco Property
4 EXHIBIT B. Maps depicting the Everett Smelter Site and relevant portions thereof
5 EXHIBIT C. Cleanup Action Plan (FCAP/FEIS)
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1 I. INTRODUCTION

2 A. This prospective purchaser consent decree ("Decree") is made and entered into
3 by and between the Washington State Department of Ecology ("Ecology") and the Housing
4 Authority of the City of Everett ("EHA").

5 B. The purpose of this Decree is to (1) resolve the potential liability of EHA for
6 contamination of soil, groundwater and surface water at the Everett Smelter Site (Site) arising
7 from releases or threatened releases of hazardous substances associated with the historic
8 operation of the Everett Smelter; (2) to promote the public interest by providing for remedial
9 action at one portion of the Site known as the "Fenced Area"; and (3) to facilitate the cleanup
10 and redevelopment of contaminated residential land in Everett, Washington, within the "Fenced
11 Area." The Fenced Area includes both streets and other public rights of way (the "Public
12 Property"), and 22 vacant residential-zoned tracts of real property (the "Asarco Property"). A
13 legal description of the Asarco Property is attached as Exhibit A. Maps of the Site that depict
14 the extent of the Site plus relevant portions of the Site such as the Fenced Area, are attached as
15 Exhibit B.

16 C. EHA is entering into a Purchase and Sale Agreement (the "Agreement") to
17 purchase the Asarco Property from Domestic Realty Company, a wholly-owned subsidiary of
18 ASARCO Incorporated, a New Jersey Corporation ("Asarco"), current owner of the Asarco
19 Property. EHA anticipates that it will also seek vacation of some or all of the Public Property,
20 and will hold title to the Public Property until new streets are created and dedicated to the City
21 of Everett.

22 D. EHA proposes to perform a partial cleanup of the Site, by completing clean up of
23 one portion of the Site, the Fenced Area, and making the Fenced Area available for single
24 family or other residential development, consistent with applicable City of Everett zoning
25 provisions and comprehensive plan designations as those designations may be revised. EHA's
26 proposed completion of cleanup for the Fenced Area will occur subsequent to remediation of

1 the Fenced Area by removal of all material with arsenic concentrations exceeding 3,000 mg/kg,
2 which will be performed by Asarco outside the terms of this Decree and which will serve as a
3 precondition of EHA's purchase of the Asarco Property.

4 E. In the absence of this Decree, at the time it acquires an interest in the Fenced
5 Area, EHA would incur potential liability under RCW 70.105D.040(1)(a) of the Model Toxics
6 Control Act ("MTCA") for performing remedial actions, or for paying remedial costs incurred
7 by Ecology, resulting from past releases or threatened releases of hazardous substances at the
8 Site.

9 F. Ecology has identified confirmed or suspected contamination in soil,
10 groundwater, and surface water at the Site. Ecology has assigned the Site an overall priority
11 ranking of 1 pursuant to MTCA.

12 G. Asarco has performed a Remedial Investigation and Feasibility Study ("RI/FS")
13 (1995) and other sampling efforts and studies, which confirmed that environmental media at the
14 upland area of the Site contain concentrations of hazardous substances above applicable MTCA
15 cleanup levels, and which characterized the upland area of the Site adequately for cleanup
16 activities. The upland area of the Site includes the Fenced Area.

17 H. Ecology has approved an Integrated Final Cleanup Action Plan (1999), as
18 amended (2002) ("FCAP/FEIS"), attached to this Decree as Exhibit C. Ecology has also
19 approved an Interim Action Report and Final Design Report, both attached as Exhibit G. These
20 documents provide for (1) removal of all material from the Fenced Area in excess of 3,000
21 mg/kg of arsenic, followed by (2) removal of all material from the Fenced Area between 150
22 and 3,000 mg/kg of arsenic and the placement of a minimum of two feet of clean fill, and (3)
23 compliance monitoring activities. As described in Section V (Statement of Facts), a subsequent
24 enforcement order issued to Asarco (Enforcement Order No. 02TCPNR-4059) and an Agreed
25 Judgment enforcing that order (Agreed Judgment Granting Relief to Enforce Order Pursuant to
26 RCW 70.105D.050, Snohomish Cty. Sup. Ct. No. 03-2-08502-1, October 20, 2003) ("Agreed

1 Judgment”), require partial implementation of FCAP/FEIS provisions. The application of
2 MTCA cleanup and remediation levels as indicated in the FCAP/FEIS is appropriate under
3 MTCA for single family or other residential redevelopment of the Fenced Area, the portion of
4 the Site that is the subject of this Decree (as a result of the 2002 amendment of the FCAP/FEIS,
5 the Restrictive Covenant(s) to be applied to property in the Fenced Area need not prohibit single
6 family residential use).

7 I. This Decree promotes the public interest by expediting cleanup activities at the
8 Site and by facilitating the redevelopment and reuse of a portion of the Site (the Fenced Area)
9 for single family or residential and/or related uses consistent with applicable zoning and
10 comprehensive plan designations as those designations may be revised.

11 J. EHA has offered to further certain Ecology goals as provided in this Decree, in
12 exchange for a covenant not to sue and protection from contribution under MTCA. Among
13 other things, subsequent to purchasing the Asarco Property, EHA will complete cleanup of the
14 the Fenced Area as specified in the FCAP/FEIS. EHA will not be responsible under the terms
15 of this Decree for conducting remedial actions at the Site outside the Fenced Area which the
16 FCAP/FEIS and associated cleanup documents would otherwise require be done outside the
17 Fenced Area, including but not limited to the required monitoring of ground water and surface
18 water outside the Fenced Area.

19 K. Plans for the redevelopment of the Fenced Area are not likely to aggravate or
20 contribute to contamination at the Site, interfere with remedial actions that may be needed on
21 the Site, or increase human health risks to persons at or in the vicinity of the Site.

22 L. This Decree will provide a substantial public benefit by promoting the cleanup,
23 redevelopment, and active reuse of contaminated and partially vacant urban residential property
24 and providing affordable housing and substantial community and economic benefits to the area.

25 M. The Complaint in this action is being filed simultaneously with this Decree. An
26 answer has not been filed, and there has not been a trial on any issue of fact or law in this case.

1 However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the
2 Parties agree that settlement of these matters without litigation is reasonable and in the public
3 interest and that entry of this Decree is the most appropriate means of resolving these matters.

4 N. By entering into this Decree, the Parties do not intend to discharge nonsettling
5 parties from any liability they may have with respect to matters alleged in the Complaint. The
6 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
7 sums expended under this Decree.

8 O. This Decree shall not be construed as proof of EHA liability or responsibility for
9 any releases of hazardous substances or cost for remedial action nor an admission of any facts;
10 provided, however, that EHA shall not challenge the jurisdiction of Ecology in any proceeding
11 to enforce this Decree.

12 P. The Court is fully advised of the reasons for entry of this Decree, and good cause
13 having been shown:

14 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

15 **II. JURISDICTION**

16 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
17 to MTCA, Chapter 70.105D RCW. Venue is proper in Snohomish County pursuant to RCW
18 70.105D.050(5)(b).

19 B. Authority is conferred upon the Washington State Attorney General by RCW
20 70.105D.040(4)(a) and 70.105D.040(5) to agree to a settlement with any potentially liable
21 person ("PLP") if, after public notice and any required hearing, Ecology finds the proposed
22 settlement would lead to a more expeditious cleanup of hazardous substances. In addition, the
23 Attorney General may agree to a settlement with a person not currently liable for remedial
24 action at a facility who proposes to purchase, redevelop, or reuse the facility, provided that the
25 settlement will yield substantial new resources to facilitate cleanup, the settlement will expedite
26 remedial action consistent with the rules adopted under MTCA, and Ecology determines based

1 upon available information that the redevelopment or reuse of the facility is not likely to
2 contribute to the existing release or threatened release, interfere with remedial actions that may
3 be needed at the site, or increase health risks to persons at or in the vicinity of the site. RCW
4 70.105D.040(4)(b) requires that such a settlement be entered as a consent decree issued by a
5 court of competent jurisdiction.

6 C. Ecology has determined that a release or threatened release of hazardous
7 substances has occurred at the Site.

8 D. EHA currently owns a number of properties that are located within the Site's
9 boundaries, as outlined in Exhibit H to this Decree. Given the unique circumstances and all
10 information presented by EHA to Ecology in Exhibit H, however, Ecology has determined
11 under RCW 70.105D.040(3)(b) that EHA innocently purchased such properties and is not
12 currently liable for the Site under RCW 70.105D.040(1)(a) by virtue of owning such properties.
13 EHA certifies that it does not currently own any other interest in the Site, except as
14 contemplated by paragraph E of this Section, below.

15 E. EHA and Asarco are negotiating a Purchase and Sale Agreement for a separate
16 portion of property at the Site, the Asarco Houses. At the time EHA acquires an interest in the
17 Fenced Area, EHA will have previously acquired the Asarco Houses and settled through a
18 separate Prospective Purchaser Consent Decree (the "Asarco Houses Consent Decree") the
19 liability for the Site that would otherwise be incurred at the time it acquires the Asarco Houses.

20 F. Ecology has not determined that EHA is a PLP for the Site, and EHA has
21 certified under Section XII (Certification) that it is not otherwise currently liable with respect to
22 the Site under Chapter 70.105D RCW, and pursuant to paragraphs D and E of this Section.

23 G. Were EHA to acquire any interest in property at the Site in addition to the
24 separate interests owned by EHA and as described in paragraphs D and E of this Section, it
25 could become a PLP as an owner or operator under RCW 70.105D.040(1)(a). This Decree is
26 entered prior to EHA acquisition of any interest in the Fenced Area in order to resolve EHA's

1 liability for the Site that would otherwise be incurred through EHA's acquisition of an interest
2 in the Fenced Area, and to facilitate a more expeditious cleanup at the Site than otherwise would
3 occur. This Decree is entered pursuant to the authority set forth in RCW 70.105D.040(5).

4 H. This Decree has been subject to public notice and comment.

5 I. This Decree will yield substantial new resources to facilitate cleanup, and will
6 expedite remedial action consistent with Chapter 173-340 WAC. Based on available
7 information, Ecology has determined that the redevelopment or reuse of the facility will provide
8 a substantial public benefit and is not likely to contribute to the existing release or threatened
9 release, interfere with remedial actions that may be needed at the Site, or increase health risks to
10 persons at or in the vicinity of the Site.

11 III. PARTIES BOUND

12 This Decree shall apply to and be binding upon the Parties to this Decree, their
13 successors and assigns. The undersigned representative of each party hereby certifies that he or
14 she is fully authorized to enter into this Decree and to execute and legally bind such party to
15 comply with the Decree. EHA agrees to undertake all actions required by the terms and
16 conditions of this Decree and not to contest state jurisdiction regarding this Decree. No change
17 in ownership or corporate status shall alter EHA's responsibility under this Decree. EHA shall
18 provide a copy of this Decree to Asarco and all agents, contractors, and subcontractors retained
19 to perform work required by this Decree, and shall ensure that all work undertaken by such
20 agents, contractors, and subcontractors complies with this Decree.

21 IV. DEFINITIONS

22 Except as specified herein, all definitions in RCW 70.105D.020 and WAC 173-340-200
23 apply to the terms of this Decree.

24 "Asarco Houses" shall mean the 15 residential properties, lying outside of the Fenced
25 Area, with existing single-family and duplex houses, located north of Butler Street on
26 Hawthorne Street, Pilchuck Path and East Marine View Drive, as shown in Exhibit B.

1 "Asarco Houses Consent Decree" shall mean the Prospective Purchaser Consent Decree
2 entered into by EHA to resolve the liability for contamination at the Site that EHA would
3 otherwise incur by purchasing the Asarco Houses.

4 "Asarco Property" shall mean the 22 residential-zoned tracts of real property that are
5 located within the "Fenced Area," as legally described in Exhibit A and shown in Exhibit B.

6 "Consent Decree" or "Decree" shall mean this Decree and each of the Exhibits to the
7 Decree. All exhibits are integral and enforceable parts of this Decree.

8 "Fenced Area" refers to the Former Arsenic Trioxide Processing Area as shown in
9 Figure 1-2 of the FCAP/FEIS, Exhibit C, and in Exhibit B. The Fenced Area comprises one
10 portion of the Site, and includes 22 residential-zoned tracts of real property ("Asarco Property")
11 along with streets and other public rights of way ("Public Property"), generally located south of
12 North Broadway (SR 529), east of Hawthorne Street, west of East Marine View Drive and north
13 of Butler street, upon which the residential structures and improvements have been demolished
14 and are now surrounded by security fencing.

15 "Final Design Report" shall mean the *Final Design Report, Everett Smelter Site, 2004*,
16 attached as Exhibit G (Exhibit G also includes the Interim Action Report), and incorporated by
17 reference herein.

18 "Integrated Final Cleanup Action Plan" and "FCAP/FEIS" shall mean the combined
19 Integrated Final Cleanup Action Plan and Final Environmental Impact Statement for the Upland
20 Area, November 19, 1999, as amended, attached as Exhibit C, and incorporated by reference
21 herein.

22 "Interim Action Report" shall mean the *Interim Action Report, Fenced Area Cleanup,*
23 *Everett Smelter Site, 2002*, attached as Exhibit G (Exhibit G also includes the Final Design
24 Report), and incorporated by reference herein.

25 "Parties" refers to the Washington State Department of Ecology ("Ecology") and the
26 Housing Authority of the City of Everett ("EHA").

1 "Peripheral Area" shall mean that portion of the upland area of the Site, as shown in
2 Figure 1-2 of the FCAP/FEIS, Exhibit C, and in Exhibit B, which is outside of the Fenced Area.

3 "Public Property" shall mean the public streets and other public rights of way that are
4 located within the "Fenced Area," as shown in Exhibit B.

5 "Asarco Tacoma Smelter" shall mean the portion of the Commencement Bay Near
6 Shore Tidelands Superfund site which is Asarco's former Tacoma Smelter, Ruston Way and
7 North 51st Street, Tacoma, WA 98407, EPA ID WAD980726368.

8 "Section" shall mean a portion of this Decree identified by a Roman numeral and
9 including one or more paragraphs.

10 "Site" shall mean the Everett Smelter Site located in Everett, Washington. The Site is
11 defined by the extent of contamination caused by the release or threatened release of hazardous
12 substances at the Site. The Site is generally located in northeast Everett and is more particularly
13 described in Exhibit B to this Decree, which is a detailed Site diagram. The Site includes as one
14 portion the Fenced Area, and as another portion, the Asarco Houses. The Site constitutes a
15 Facility under RCW 70.105D.020(4).

16 "Successors in Interest and Assign" or "successors and assigns" shall mean any person
17 who acquires an interest in the Fenced Area subsequent to EHA acquiring an interest in the
18 Fenced Area, through purchase, lease, transfer, assignment, or otherwise.

19 V. STATEMENT OF FACTS

20 Ecology makes the following findings of fact:

21 1. The Site is located in Everett, Washington, and consists of approximately 686
22 acres. The Fenced Area constitutes a portion of the Site and approximately 5 acres. Maps of
23 the Site, which depict the extent of the Site plus relevant portions of the Site including the
24 Fenced Area, Asarco Houses, Asarco Property, and Public Property, are attached as Exhibit B.

25 2. The Everett Smelter Site previously hosted a smelter plant that, at the turn of the
26 last century, was one of the largest industrial facilities in Everett. In 1894, the Puget Sound

1 Reduction Company began operating the smelter, refining ores primarily from the Monte Cristo
2 mining district. Some of the ore from the Monte Cristo mining district contained over
3 25 percent total arsenic. To recover arsenic from the ore, an arsenic processing plant was
4 constructed on the southern end of the Everett Smelter Site. The plant consisted of several
5 structures, including additional smoke stacks, flues, ovens and mills, and a large arsenic
6 processing building.

7 3. In 1903, a corporation that subsequently became ASARCO Incorporated
8 ("Asarco") bought and continued operating the smelter. Asarco subsequently dismantled the
9 smelter in 1914 and 1915.

10 4. Asarco sold the smelter and its surrounding land-holdings through a series of
11 transactions between 1914 and 1936 to different buyers, including the Weyerhaeuser Company
12 ("Weyerhaeuser"), the State of Washington Department of Transportation, the City of Everett
13 and Burlington Northern. In addition, 17.89 acres were purchased and subsequently developed
14 into residential neighborhoods. About 25 houses were built on property that is now within the
15 Fenced Area.

16 5. During an environmental investigation in 1990, Weyerhaeuser discovered an
17 outcrop of slag discovered on the hillside below East Marine View Drive. As part of the
18 investigation, slag, soil, and ground water samples were collected on Weyerhaeuser property
19 and analyzed for the presence of heavy metals. After receiving the data, Weyerhaeuser notified
20 Ecology that a release of a hazardous substance had occurred at the Everett Smelter Site.

21 6. Ecology conducted an initial investigation of the Smelter Site in December 1990.
22 The investigation included a site visit, historic research of the area, and a review of the data
23 previously submitted by Weyerhaeuser.

24 7. Ecology conducted a Site Hazard Assessment (SHA) of the Smelter Site in
25 February 1991. The SHA consisted of a magnetic survey, to attempt to locate the extent of
26 buried slag, and collection of 20 surface soil samples that were analyzed for metals. Laboratory

1 analysis demonstrated releases of arsenic, cadmium, and lead to the soils found in the residential
2 area on the site.

3 8. Ecology conducted a "Pre-Remedial Investigation" (Pre-RI) in May 1991. The
4 Pre-RI consisted of the preparation of a site map and collection of additional soil samples. The
5 purpose of the investigation was to further characterize the nature and extent of elevated
6 concentrations of residual metals that were identified in the SHA. Results of the Pre-RI
7 confirmed releases of arsenic, cadmium, and lead in surface soils throughout the study area.

8 9. By letter dated August 29, 1991, Ecology notified Asarco of its status as a
9 "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

10 10. In April 1992 Ecology issued Enforcement Order No. DE92TC-N147 to Asarco.
11 This Order required Asarco to perform a Remedial Investigation/Feasibility Study and certain
12 Interim Actions to limit exposure of residents to arsenic and other metals at the Smelter Site.

13 11. In March 1994, Ecology issued the first amendment to Enforcement Order
14 No. DE92TC-N147. The first amendment required Asarco to perform additional interim actions
15 and prepare an interim deliverable remedial investigation report. The amendment also required
16 Asarco to undertake additional sampling for the remedial investigation and extended the
17 schedule.

18 12. In 1994 and 1995, Asarco voluntarily implemented a property buy-out program
19 for the homes located in the Fenced Area. All but two of the homes were purchased as part of
20 this program.

21 13. In September 1995 Ecology issued Enforcement Order No. DE95TC-N350 to
22 Asarco. This Order required Asarco to immediately take action to stop the exposure to arsenic
23 of residents, pets, and others who resided in the two remaining houses at 520 and 534 East
24 Marine View Drive, within the Fenced Area. Thereafter, Asarco purchased these properties and
25 the families vacated them.

1 14. Pursuant to Enforcement Order DE92TC-N147, Asarco prepared an Interim
2 Deliverable report in April 1994 and a Remedial Investigation and Feasibility Study (RI/FS)
3 report (*Everett Smelter Remedial Investigation and Feasibility Study, prepared by*
4 *Hydrometrics, Inc. for Asarco Inc. and dated September 1995*) for most of the study area.

5 15. Based on analytical data in the RI/FS report, there is evidence of arsenic and lead
6 in ground water and arsenic and lead in surface water on the Site. Based on other analytical
7 data collected, there is evidence of arsenic and lead in house dust on the Site.

8 16. Subsequent to issuance of Enforcement Order Nos. DE92TC-N147 and
9 DE95TC-N350 Asarco expanded its property buy-out program and purchased all but fifteen of
10 the residences in the area south of Broadway, east of Balsam Lane, north of Butler Street, and
11 west of East Marine View Drive. Since Asarco's purchase, all of the homes located within the
12 Fenced Area have been vacated and demolished. Many of the homes adjacent to the Fenced
13 Area have also been vacated, although Asarco is currently leasing some of these properties,
14 known as the Asarco Houses, for residential use.

15 17. After public notice and comment, Ecology issued the Integrated Final Cleanup
16 Action Plan and Final Environmental Impact Statement for one portion of the Everett Smelter
17 Site (FCAP/FEIS) on November 19, 1999. The FCAP/FEIS required, among other things, that
18 all material within the Fenced Area with an arsenic concentration greater than 3,000
19 milligrams/kilogram (mg/kg, equivalent to parts per million) be excavated and sent off-site to a
20 facility permitted to accept such waste. This requirement was based on concern over leaving
21 high levels of contamination in an urban neighborhood that, if exposed, could constitute an
22 immediate threat to human health.

23 18. As documented in the RI/FS and FCAP/FEIS, the remedial action to be
24 implemented pursuant to this Decree will achieve partial cleanup of the Site by achieving
25 cleanup standards for one portion of the Site, the Fenced Area. The remedial action to be
26 implemented under the FCAP/FEIS includes (1) removal of all material from the Fenced Area

1 in excess of 3,000 mg/kg of arsenic, followed by (2) removal of all material from the Fenced
2 Area between 150 and 3,000 mg/kg of arsenic and the placement of a minimum of two feet of
3 clean fill, and (3) compliance monitoring activities. Because treatment, excavation, disposal,
4 and/or recycling of all hazardous substances at this portion of the Site is not practicable, the
5 remedy for the Fenced Area of the Site includes elements of on-site containment, through on-
6 site capping, as set forth in the FCAP/FEIS. The remedy therefore includes monitoring and
7 institutional controls.

8 19. In January 2000 Asarco issued the draft *Comprehensive Lowland Area Remedial*
9 *Investigation Report* (LL Report). Asarco's report concluded that it is likely that remediation
10 activities planned for the Fenced Area would be successful in intercepting and removing current
11 sources of metals to ground water and surface water. Asarco's report found that the best
12 approach for addressing elevated arsenic concentrations was to begin with the Fenced Area.

13 20. On June 10, 2002, Ecology issued Enforcement Order No. 02TCPNR-4059 to
14 Asarco. Enforcement Order No. 02TCPNR-4059 required Asarco to perform an interim action
15 to remove the most contaminated material within the Fenced Area, consisting of arsenic
16 concentrations exceeding 3,000 mg/kg. Specifically, the enforcement order required Asarco to
17 excavate and send to an off-site facility all flue dust, arsenic trioxide, soil, and any other
18 material with an arsenic concentration exceeding 3,000 mg/kg.

19 21. Ecology amended Enforcement Order No. 02TCPNR-4059 in December of
20 2002, to require Asarco to include removal of material outside of the Fenced Area with arsenic
21 concentrations exceeding 3,000 mg/kg. The material outside the Fenced Area that is known to
22 have concentrations exceeding the 3,000 mg/kg limit is located along East Marine View Drive.

23 22. Enforcement Order No. 02TCPNR-4059 required Asarco to submit a work plan
24 for accomplishing the required cleanup work. Asarco submitted a draft work plan in December
25 2002. The work plan proposed accomplishing the required work in 2003 and 2004, but
26 acknowledged that delay of removal of material until 2004 would violate the Order. Asarco's

1 work plan indicated Asarco intended to send excavated material to its Asarco Tacoma Smelter,
2 but contained a contingency plan for actions to implement if the material could not be sent to
3 the Asarco Tacoma Smelter.

4 23. In a letter dated March 18, 2003, Ecology approved Asarco's December 2002
5 draft work plan.

6 24. On June 20, 2003, after correspondence established Asarco's inability to meet
7 the April 30, 2003 mobilization date stated in Enforcement Order No. 02TCPNR-4059, Ecology
8 filed suit in Snohomish County Superior Court. The suit sought injunctive relief to cause
9 Asarco to come into compliance with Enforcement Order No. 02TCPNR-4059, and adhere to
10 the schedule which had been set out in the Ecology approved December 2002 work plan.

11 25. On October 20, 2003, the Court entered an Agreed Judgment requiring Asarco to
12 come into compliance with Enforcement Order No. 02TCPNR-4059 and to comply with an
13 agreed schedule/timeline to achieve final removal of material with arsenic concentrations
14 exceeding 3,000 mg/kg by October 31, 2004 and to submit to Ecology a draft As-Built Report
15 documenting such removal by December 31, 2004.

16 26. On December 1, 2003, EHA and Asarco entered into an Option to Purchase (the
17 "Option") the Asarco Property and the Asarco Houses, with an Option term of 120 days, which
18 has been extended to 150 days.

19 27. The City of Everett has conducted land use planning under Ch. 36.70A RCW,
20 and the Site is designated 1.3, Single Family Residential, by the Everett Comprehensive Plan.
21 The Site has been used for residential purposes and is zoned R-2, single family medium density
22 residential. Any hazardous substances in soil that may remain on portions of the Fenced Area
23 after the remedial action has been completed pursuant to this Decree will not pose a threat to
24 human health and the environment. In order to enable the work in this Decree to proceed, the
25 City of Everett has agreed to take certain actions, including guaranteeing an EHA loan, granting
26 EHA powers as a community renewal agency, and abandoning certain rights of way and

1 utilities. In a letter dated May 18, 2004, which is attached as Exhibit I to this Decree and
2 incorporated herein by reference, Ecology has confirmed to the City that it does not consider the
3 City to be acquiring liability under MTCA for its role in supporting EHA's purchase and
4 cleanup of these properties.

5 28. EHA intends to facilitate the redevelopment of the Fenced Area portion of the
6 Site for single family or other residential purposes consistent with applicable City of Everett
7 comprehensive plan designations and zoning regulations as those designations may be revised.
8 EHA intends, as necessary, to seek comprehensive plan and zoning changes to permit higher
9 density residential development than may be allowed under current designations and
10 regulations.

11 VI. DESCRIPTION OF PLANNED PROJECT

12 EHA proposes to acquire the Asarco Property through purchase pursuant to a purchase
13 and sale agreement that is currently being negotiated. The sale is expected to close on or before
14 September, 2004.

15 EHA proposes to perform a partial cleanup of the Site by completing the cleanup of the
16 Fenced Area as described in this Decree, and to facilitate the redevelopment of the Fenced Area
17 for single family or other residential uses, consistent with the City of Everett's zoning and
18 comprehensive plan designations for the Site as those designations may be revised. EHA
19 expects that Asarco will utilize, inter alia, sale proceeds from EHA's purchase of the Asarco
20 Houses under a separate purchase agreement, and matching funds from an Environmental Trust
21 Fund administered by the U.S. Environmental Protection Agency, to remediate the Fenced Area
22 plus an additional adjacent area, by removing material with arsenic concentrations exceeding
23 3,000 mg/kg, in accordance with the Agreed Judgment. EHA shall then, upon purchase of the
24 Asarco Property, complete the cleanup of the Fenced Area of the Site in accordance with the
25 Scope of Work set forth herein (FCAP/FEIS, Exhibit C, and the Interim Action Report and
26 Final Design Report, Exhibit G) and with the Schedule (Exhibit F) set forth herein, including

1 but not limited to: removal of material within the Fenced Area with concentrations between 150
2 and 3,000 mg/kg, regrading of the Fenced Area, placement of a marker fabric and a minimum of
3 two feet of clean fill over contaminated soil, and implementation of required monitoring and
4 institutional controls within the Fenced Area.

5 The placement date (not to exceed June 2006) and the specifications for the minimum of
6 two feet of clean fill shall be established in the Site Restoration Plan as approved by Ecology (or
7 an Interim Site Restoration Plan, if one is prepared, as approved by Ecology). Unless otherwise
8 approved by Ecology in the Site Restoration Plan: (1) the minimum of two feet of clean fill shall
9 be topsoil that is either not contaminated with hazardous substances, or that both meets MTCA
10 unrestricted land use soil cleanup levels and constitutes "clean soil" as defined in WAC 173-
11 350-100 and is suitable to support lawns or other vegetation typical of single family residential
12 use; and (2) the cap shall be placed and hydroseeded by October 31, 2004 if possible, but in any
13 event not later than September 1, 2005. If the City of Everett has approved redevelopment
14 project plans for the Fenced Area prior to capping and the City approves of a delay, then
15 Ecology may agree to delay completion of the capping until June 2006.

16 The minimum of two feet of clean soil will be used for landscaping and other activities
17 consistent with the residential use of the Fenced Area portion of the Site. Controlled
18 disturbance or modification of the cap as required for site redevelopment activities, including
19 potential short-term exposure of soils beneath the capping layer necessary for the installation of
20 fence posts and/or modification of the cap elevations and contours, is allowable provided such
21 disturbance is performed in accordance with the Restrictive Covenants (Exhibit D).

22 The proposal will ensure the cleanup of approximately 5 acres of land and mitigate
23 existing exposure pathways at the Fenced Area.

24 Ecology has complied with the State Environmental Policy Act ("SEPA") environmental
25 review requirements for the proposed remedial actions to be performed. Ecology has been
26 established as the agency lead pursuant to SEPA. The SEPA Final Environmental Impact

1 Statement for the planned remedial actions is integrated with the Final Cleanup Action Plan
2 dated November 19, 1999, as amended (FCAP/FEIS) and is attached as Exhibit C.

3 VII. WORK TO BE PERFORMED

4 This Decree contains a program designed to protect human health and the environment
5 at the Fenced Area of the Site from the known release, or threatened release, of hazardous
6 substances or contaminants at, on, or from the Site.

7 A. Scope of Work

8 The Scope of Work requires EHA to implement the Interim Action Report and Final
9 Design Report, Exhibit G, according to the Schedule as set forth herein and contained in Exhibit
10 F, except that EHA will not be responsible for removing the material exceeding 3000 mg/kg
11 arsenic. With respect to the compliance monitoring requirements set forth in the Compliance
12 Monitoring Plan, incorporated as Appendix A into both the Interim Action Report and the Final
13 Design Report (Exhibit G), EHA and its successors and assigns shall be responsible under this
14 Consent Decree for implementing the requirements of the Compliance Monitoring Plan
15 applicable to soils in the Fenced Area, but shall not be responsible for implementing monitoring
16 requirements at the Site outside of the Fenced Area, including groundwater, surface water and
17 storm drain sediment monitoring and those requirements applying to soil in the Peripheral Area
18 and import material placed in the Peripheral Area.

19 EHA expects that prior to the Effective Date of this Decree and as a precondition to
20 EHA's purchase of the Asarco Property, Asarco will utilize, *inter alia*, sale proceeds from
21 EHA's previous purchase of the Asarco Houses and matching funds from an Environmental
22 Trust Fund administered by the U.S. Environmental Protection Agency to implement the
23 remediation specified in the Agreed Judgment, including all attachments thereto, and work
24 plans prepared thereunder, according to the schedules provided therein. Clean up activities to
25 be performed by Asarco will include removal of all material from the Site in excess of 3,000
26 mg/kg of arsenic.

1 Pursuant to this Decree, EHA shall implement a remedial action to remove all material
2 from the Fenced Area between 150 and 3,000 mg/kg of arsenic, regrade, cap, perform
3 compliance monitoring, and perform other work as required by the FCAP/FEIS, the Interim
4 Action Report and the Final Design Report, including but not limited to preparation of the
5 Landscape Buffer Plan and Final Site Restoration Plan. EHA's responsibility for remedial
6 action at the Site is confined by the terms of this Decree to the Fenced Area.

7 The contaminated soils from the Fenced Area shall be disposed of at the Asarco Tacoma
8 Smelter. EHA may request an extension of schedule based upon good cause, pursuant to
9 Section XXIV (Extension of Schedule), if the Asarco Tacoma Smelter becomes unavailable for
10 disposal of materials from the Fenced Area as required by this Decree. Coordination of cleanup
11 and development will minimize disruption to the surrounding community. Ecology has
12 reviewed and approved the proposed methods for transportation and disposal as described in the
13 Final Design Report.

14 EHA shall provide security at the Fenced Area designed to prevent exposure of
15 unauthorized persons to contaminated soils. Security measures shall be maintained during the
16 implementation of the remediation activities required by this Decree, unless otherwise agreed to
17 by Ecology.

18 Completion of remediation for any parcel may be certified by Ecology after receipt of all
19 validated performance monitoring data and pursuant to Section XXVII (Certifications by
20 Ecology).

21 Because residual concentrations of hazardous substances in groundwater at the Site will
22 exceed cleanup levels following completion of the remedial action, and because residual
23 concentrations of hazardous substances in soils at certain parcels of the Fenced Area may
24 exceed cleanup levels following completion of the remedial action, EHA shall either: (1) record
25 Restrictive Covenant 1 shown in Exhibit D for parcels on which soil contamination remains or
26 (2) record Restrictive Covenant 2 shown in Exhibit D for parcels where no soil contamination

1 remains. EHA must seek Ecology's prior written approval before filing a Restrictive Covenant
2 for any parcel within ten (10) days of the completion of the remedial action for that parcel or for
3 the Fenced Area as a whole. EHA shall then file the Restrictive Covenant with the Snohomish
4 County Auditor's Office within ten (10) days of receiving Ecology's written approval, and shall
5 then provide Ecology with a copy of each recorded Restrictive Covenant within thirty (30) days
6 of the recording date. If associated replatting of any such parcels will occur within an expected
7 timeframe and no activities conducted at the parcels in question will threaten the integrity of the
8 remedial action or the continued protection of human health and the environment in the interim,
9 EHA may extend the timeline for seeking Ecology's written approval of the Restrictive
10 Covenant for the parcel in question to within ten (10) days of any associated replatting, and the
11 timeline for filing such Restrictive Covenant will be extended to within ten (10) days of EHA's
12 receipt of Ecology's written approval. If at any point in the future the conditions requiring a
13 restrictive covenant for any parcel under this Section no longer exist, then EHA, or its
14 Successors in Interest and Assigns, may submit a request to Ecology that the restrictive
15 covenant be eliminated. The restrictive covenant shall be removed, if Ecology, after public
16 notice and opportunity to comment, concurs.

17 B. Schedule for Work

18 The Schedule for Work is set forth in Exhibit F.

19 C. EHA agrees not to perform any remedial actions outside the scope of this Decree
20 unless approved in writing by Ecology. All work conducted by EHA under this Decree shall be
21 done in accordance with Chapter 173-340 WAC unless otherwise provided herein.

22 **VIII. ECOLOGY COSTS**

23 EHA agrees to pay costs incurred by Ecology pursuant to this Decree and consistent
24 with WAC 173-340-550(2). These costs shall include work performed by Ecology or its
25 contractors for, or on, the Fenced Area of the Site under Ch. 70.105D RCW both prior to and
26 subsequent to the issuance of this Decree for investigations, remedial actions, and Decree

1 preparation, negotiations, oversight, and administration relating to work that is required by this
2 Decree. Ecology costs shall include costs of direct activities and the support costs of direct
3 activities as defined in WAC 173-340-550(2). EHA agrees to pay the required amount within
4 ninety (90) days of receiving from Ecology an itemized statement of costs that includes a
5 summary of costs incurred, an identification of involved staff, and the amount of time spent by
6 involved staff members on the project, unless Ecology agrees in writing and in advance to an
7 extended schedule for payment. A general statement of work performed will be provided upon
8 request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within
9 ninety (90) days of receipt of the itemized statement will result in interest charges pursuant to
10 WAC 173-340-550(4), unless Ecology agrees in writing and in advance to an extended payment
11 schedule.

12 **IX. GRANT FUNDING**

13 Pursuant to RCW 70.105D.070(3)(a) and Chapter 173-322 WAC, Ecology has made the
14 following determinations: (a) EHA is a local government required, pursuant to this Decree, to
15 undertake remedial action at the Site; and (b) EHA is prepared to proceed promptly to
16 accomplish the remediation set forth in Section VII (Work to Be Performed) and expenses
17 incurred in implementing the work to be performed, hereunder are eligible for a local
18 government grant; and (c) implementation of this Decree will lead to a more expeditious
19 cleanup of hazardous substances at the Site in compliance with cleanup standards adopted under
20 RCW 70.105D.030(2)(e).

21 **X. DESIGNATED PROJECT COORDINATORS**

22 The project coordinator for Ecology is:

23 David L. South
24 Department of Ecology
25 3190 160th Avenue SE
26 Bellevue, WA 98008
Telephone: (425-649-7200)

1 The project coordinator for EHA is:

2 Mr. Bud Alkire
3 Executive Director
4 The Housing Authority of the City of Everett
P.O. Box 1547, Everett, WA 98206-1547
Telephone: (425) 303-1102

5 Each project coordinator shall be responsible for overseeing the implementation of this
6 Decree. The Ecology project coordinator will be Ecology's designated representative at the
7 Site. To the maximum extent possible, communications between Ecology and EHA, and all
8 documents, including reports, approvals, and other correspondence concerning the activities
9 performed pursuant to the terms and conditions of this Decree shall be directed through the
10 project coordinators. The project coordinators may designate, in writing, working-level staff
11 contacts for all or portions of the implementation of the work required by this Decree. The
12 project coordinators may agree to minor changes to the work to be performed without formal
13 amendments to this Decree. Minor changes will be documented in writing by Ecology.
14 Substantial changes shall require amendment of this Consent Decree.

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

17 XI. PERFORMANCE

18 All work performed pursuant to this Decree shall be under the direction and supervision,
19 as necessary, of a professional engineer or hydrogeologist, or equivalent, with experience and
20 expertise in hazardous waste site investigation and cleanup. All construction and engineering
21 work performed pursuant to this Decree must be under the supervision of a professional
22 engineer. EHA shall notify Ecology in writing of the identity of such engineer(s) or
23 hydrogeologist(s), or others, and of any contractors and subcontractors to be used in carrying
24 out the terms of this Decree, in advance of their involvement at the Site.

1 **XII. CERTIFICATION OF EHA**

2 EHA represents and certifies that, to the best of its knowledge and belief, it has fully and
3 accurately disclosed to Ecology the information currently in its possession or control that relates
4 to the environmental conditions at and in the vicinity of the Site, or to EHA's right and title
5 thereto.

6 EHA represents and certifies that it did not cause or contribute to a release or threatened
7 release of hazardous substances at the Site and is not otherwise potentially liable under RCW
8 70.105D.040(1), pursuant to paragraph D of Section II (Jurisdiction), except as provided in the
9 Asarco Houses Decree, and except by becoming an owner and/or operator of the Site by
10 acquiring an interest in the Fenced Area.

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

12 No voluntary conveyance or relinquishment of title, easement, leasehold, or other
13 interest in any portion of the Fenced Area of the Site shall be consummated by EHA without
14 provision for continued operation and maintenance of any containment system, treatment
15 system, and/or monitoring system installed or implemented pursuant to this Decree.

16 Prior to EHA's transfer of any interest in all or any portion of Fenced Area of the Site,
17 and during the effective period of this Decree, EHA shall serve a copy of this Decree upon any
18 prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at
19 least thirty (30) days prior to any transfer, EHA shall notify Ecology of said transfer. Upon
20 transfer of any interest, EHA shall restrict uses and activities to those consistent with this
21 Consent Decree and notify the transferee(s) of the restrictions on the use of the property.

22 **XIV. AMENDMENT OF CONSENT DECREE**

23 This Decree may only be amended by a written stipulation among the Parties that is
24 entered by the Court, or by order of the Court. Such amendment shall become effective upon
25 entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld by any
26 Party.

1 EHA shall submit any request for an amendment to Ecology for approval. Ecology shall
2 indicate its approval or disapproval in a timely manner after the request for amendment is
3 received. If the amendment to the Decree represents a substantial change, Ecology will provide
4 public notice and opportunity for comment. Reasons for the disapproval of a proposed
5 amendment to the Decree shall be stated in writing. If Ecology does not agree to any proposed
6 amendment, the disagreement may be addressed through the dispute resolution procedures
7 described in Section XV (Dispute Resolution).

8 **XV. DISPUTE RESOLUTION**

9 A. In the event a dispute arises as to any approval, disapproval, proposed change, or
10 other decision or action by Ecology's project coordinator, the Parties shall use the dispute
11 resolution procedure set forth below.

12 (1) Upon receipt of the Ecology project coordinator's decision, EHA shall
13 have fourteen (14) days to notify Ecology's project coordinator of any objection to the decision.

14 (2) The Parties' project coordinators shall then confer in an effort to resolve
15 the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days,
16 Ecology's project coordinator shall issue a written decision.

17 (3) EHA may then request Ecology management review of the decision.
18 This request shall be submitted in writing to the Toxics Cleanup Program Manager within seven
19 (7) days of receipt of Ecology's project coordinator's written decision.

20 (4) Ecology's Toxics Cleanup Program Manager shall conduct a review of
21 the dispute and shall issue a written decision regarding the dispute within thirty (30) days of the
22 request for review by EHA. The Toxics Cleanup Program Manager's decision shall be
23 Ecology's final decision on the disputed matter.

24 B. If Ecology's final written decision is unacceptable to EHA, EHA has the right to
25 submit the dispute to the Court for resolution. The Parties agree that one judge should retain
26 jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree.

1 In the event EHA presents an issue to the Court for review, the Court shall review the action or
2 decision of Ecology on the basis of whether such action or decision was arbitrary and capricious
3 and render a decision based on such standard of review.

4 C. The Parties agree to only utilize the dispute resolution process in good faith and
5 to expedite, to the extent possible, the dispute resolution process whenever it is used. When
6 either party uses the dispute resolution in bad faith or for purposes of delay, the other party may
7 seek sanctions.

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

11 **XVI. CONTRIBUTION PROTECTION**

12 With regard to claims for contribution against EHA, the Parties agree that EHA is
13 entitled to protection against claims for contribution for matters addressed in this Decree as
14 provided by RCW 70.105D.040(4)(d).

15 For the purposes of this Section, "matters addressed" include all remedial actions taken
16 or to be taken and all remedial action costs (including Ecology's oversight costs) incurred or to
17 be incurred by Ecology or any other person with respect to the Site. This Contribution
18 Protection does not protect EHA against claims for contribution or recovery of remedial action
19 costs taken or to be taken by Ecology or any other person with respect to the Site, in the event
20 EHA incurs liability for the Site by acquiring any interest in the Site other than the Fenced Area
21 as contemplated by this Decree, and EHA does not resolve such potential liability for the Site
22 through a separate, valid consent decree.
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1 **XVII. COVENANT NOT TO SUE; REOPENERS**

2 A. Covenant Not to Sue: In consideration of EHA's compliance with the terms and
3 conditions of this Decree, Ecology covenants not to institute legal or administrative actions
4 against EHA regarding the release or threatened release of hazardous substances at the Site
5 covered by this Decree.
6

7 This Decree covers only the Everett Smelter Site, specifically identified in Exhibit B and
8 those hazardous substances that Ecology knows are located at the Site as of the date of entry of
9 this Decree. This Decree does not cover any other hazardous substance or area. Ecology
10 retains all of its authority relative to any substance or area not covered by this Decree. In
11 addition, this Covenant Not to Sue does not provide EHA protection from legal or
12 administrative actions against EHA for the release or threatened release at the Site, in the event
13 EHA incurs liability for the Site by acquiring any separate interest in the Site (other than the
14 Fenced Area, as contemplated by this Decree), and EHA does not resolve such liability for the
15 Site through a separate, valid consent decree.
16

17 This Covenant Not To Sue shall have no applicability whatsoever to:

- 18 (1) Criminal liability;
19 (2) Liability for damages to natural resources;
20 (3) Any Ecology action, including cost recovery, against potentially liable persons
21 not a party to this Decree.
22

23 If factors not known to Ecology at the time of entry of the settlement agreement are
24 discovered and present a previously unknown threat to human health or the environment, and
25 Ecology determines in light of this information that further remedial action is necessary at the
26

1 Fenced Area of the Site to protect human health or the environment, the Court shall amend this
2 covenant not to sue.

3 B. Reopeners: Ecology specifically reserves the right to institute legal or
4 administrative action against EHA to require it to perform additional remedial actions at the
5 Fenced Area of the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050
6 under the following circumstances:
7

8 (1) Upon EHA's failure to meet the requirements of this Decree, including but not
9 limited to, failure of the remedial action to meet the cleanup standards identified in the
10 FCAP/FEIS (Exhibit C); or

11 (2) Upon Ecology's determination that action beyond the terms of this Decree is
12 necessary to abate an imminent and substantial endangerment to human health or the
13 environment; or

14 (3) Upon the availability of new information regarding factors previously unknown
15 to Ecology, including the nature or quantity of hazardous substances at the Site, and Ecology
16 determines, in light of this information, that further remedial action is necessary at the Fenced
17 Area of the Site to protect human health or the environment; or

18 (4) Upon Ecology's determination that additional remedial actions are necessary to
19 achieve cleanup standards for the Fenced Area of the Site within the reasonable restoration time
20 frame set forth in the FCAP/FEIS.

21 C. Except in the case of an emergency, prior to instituting legal or administrative
22 action against EHA pursuant to paragraph B. above, Ecology shall provide EHA with fifteen
23 (15) calendar days notice of such action.
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XVIII. DISCLAIMER

This Decree does not constitute a representation by Ecology that the Site is fit for any particular purpose.

XIX. RETENTION OF RECORDS

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

XX. ACCESS

Ecology or any Ecology authorized representative shall have full authority to enter and freely move about all property at the Site that EHA either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Decree; reviewing EHA's progress in carrying out the terms of this Decree; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Decree; and verifying the data submitted to Ecology by EHA. EHA shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Defendant where remedial activities or investigations will be performed pursuant to this Decree. Ecology or any authorized representative shall give reasonable notice before entering any Site property owned or controlled by EHA unless an emergency prevents such notice. All Parties who access the Site pursuant to this paragraph shall comply with the approved Health and Safety Plan in the Final Design Report, Exhibit G.

1 **XXI. COMPLIANCE WITH OTHER APPLICABLE LAWS**

2 A. All actions carried out by EHA pursuant to this Decree shall be done in
3 accordance with all applicable federal, state, and local requirements, including requirements to
4 obtain necessary permits, except as provided in paragraph B of this Section.

5 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of Chapters
6 70.94, 70.95, 70.105, 75.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing
7 local government permits or approvals for remedial action under this Decree that are known to
8 be applicable at the time of entry of the Decree have been included in the FCAP/FEIS (Exhibit
9 C), and/or the Interim Action Report and/or Final Design Report (Exhibit G), and are binding
10 and enforceable requirements of the Decree.

11 EHA has a continuing obligation to determine whether additional permits or approvals
12 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under
13 this Decree. In the event either EHA or Ecology determines that additional permits or approvals
14 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under
15 this Decree, it shall promptly notify the other party of this determination. Ecology shall
16 determine whether Ecology or EHA shall be responsible to contact the appropriate state and/or
17 local agencies. If Ecology so requires, EHA shall promptly consult with the appropriate state
18 and/or local agencies and provide Ecology with written documentation from those agencies of
19 the substantive requirements those agencies believe are applicable to the remedial action.
20 Ecology shall make the final determination on the additional substantive requirements that must
21 be met by EHA and on how EHA must meet those requirements. Ecology shall inform EHA in
22 writing of these requirements and EHA shall have the opportunity to comment on such
23 requirements. Once established by Ecology, the additional requirements shall be enforceable
24 requirements of this Decree. EHA shall not begin or continue the remedial action potentially
25 subject to the additional requirements until Ecology makes its final determination.

1 Ecology shall ensure that notice and opportunity for comment is provided to the public
2 and appropriate agencies prior to establishing the substantive requirements under this Section.

3 C. Pursuant to RCW 70.105D.090(2), in the event that Ecology determines that the
4 exemption from complying with the procedural requirements of the laws referenced in RCW
5 70.105D.090(1) would result in the loss of approval from a federal agency necessary for the
6 state to administer any federal law, such exemption shall not apply and EHA shall comply with
7 both the procedural and substantive requirements of the laws referenced in RCW
8 70.105D.090(1), including any requirements to obtain permits.

9 **XXII. SAMPLING, DATA REPORTING, AND AVAILABILITY**

10 With respect to the implementation of this Decree, EHA shall make the results of all
11 sampling, laboratory reports, and/or test results generated by it, or on its behalf available to
12 Ecology and shall submit these results in accordance with Section XXIII (Progress Reports).

13 Ground water sampling shall be submitted to Ecology according to the requirements of
14 WAC 173-340-840(5). These submittals shall be provided to Ecology in accordance with
15 Section XXIII (Progress Reports). Such groundwater sampling will be submitted to Ecology in
16 conjunction with the as built reports required by WAC 173-340-400(6)(b)(ii).

17 If requested by Ecology, EHA shall allow split or duplicate samples to be taken by
18 Ecology and/or its authorized representative of any samples collected by EHA pursuant to the
19 implementation of this Decree. EHA shall notify Ecology at least seven (7) working days in
20 advance of any sample collection or work activity at the Site. Ecology shall, upon request,
21 allow split or duplicate samples to be taken by EHA or its authorized representative, of any
22 samples collected by Ecology pursuant to the implementation of this Decree, provided it does
23 not interfere with the Ecology's sampling. Without limiting Ecology's rights under Section XX
24 (Access), Ecology shall endeavor to notify EHA at least five (5) working days prior to any
25 sampling collection activity.

1 **XXIII. PROGRESS REPORTS**

2 EHA shall submit to Ecology written monthly progress reports that describe the actions
3 taken during the previous month to implement the requirements of this Decree. The progress
4 report shall include the following:

5 A. A list of activities that have taken place at the Fenced Area pursuant to
6 the terms of this Decree during the month;

7 B. Detailed description of any deviations from required tasks not otherwise
8 documented in project plans or amendment requests;

9 C. Description of all deviations from the Schedule (Exhibit F) during the
10 current month and any planned deviations in the upcoming month;

11 D. For any deviations in schedule, a plan for recovering lost time and
12 maintaining compliance with the schedule;

13 E. All raw data (including laboratory analyses) received by EHA during the
14 past month and an identification of the source of the sample; and

15 F. A list of deliverables for the upcoming reporting period if different from
16 the Schedule.

17 EHA may substitute project reports submitted by Asarco or EHA's agents, contractors or
18 subcontractors for any EHA progress reports required under this Section, provided such reports
19 meet the above requirements. All Progress Reports shall be submitted by the tenth (10) day of
20 the month in which they are due after the Effective Date of this Decree. Unless otherwise
21 specified, Progress Reports and any other documents submitted pursuant to this Decree shall be
22 sent by hard copy and electronic copy to Ecology's project coordinator.

23 **XXIV. EXTENSION OF SCHEDULE**

24 A. An extension of schedule shall be granted only when a request for an extension is
25 submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the
26 deadline for which the extension is requested, and good cause exists for granting the extension.

1 All extensions shall be requested in writing. The request shall specify the reason(s) the
2 extension is needed.

3 An extension shall only be granted for such period of time as Ecology determines is
4 reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety
5 (90) days only as a result of:

- 6 (1) Delays in the issuance of a necessary permit which was applied for in a timely
7 manner; or
- 8 (2) Other circumstances deemed exceptional or extraordinary by Ecology; or
- 9 (3) Endangerment as described in Section XXV.

10 A requested extension shall not be effective until approved by Ecology or, if required,
11 by the Court. Ecology shall act upon any written request for extension in a timely fashion.
12 Ecology shall give EHA written notification in a timely fashion of any extensions granted
13 pursuant to this Decree. Unless the extension is a substantial change, it shall not be necessary to
14 amend the Decree pursuant to Section XIV (Amendment of Consent Decree) when a schedule
15 extension is granted.

16 B. The burden shall be on EHA to demonstrate to the satisfaction of Ecology that
17 the request for such extension has been submitted in a timely fashion and that good cause exists
18 for granting the extension. Good cause includes, but is not limited to:

- 19 (1) Circumstances beyond the reasonable control and despite the due diligence of
20 EHA, including delays caused by unrelated third parties or Ecology, such as (but not limited to)
21 delays by Ecology in reviewing, approving, or modifying documents submitted by EHA; or
- 22 (2) The unavailability of the Asarco Tacoma Smelter for disposal of the materials to
23 be removed under this Decree; or
- 24 (3) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or
25 other unavoidable casualty; or
- 26 (4) Endangerment as described in Section XXV.

1 **XXVI. PUBLIC PARTICIPATION**

2 The Public Participation Plan for the remediation of the Fenced Area of the Site pursuant
3 to the terms of this Decree, is attached as Exhibit E. Ecology shall maintain the responsibility
4 for public participation at the Site. However, EHA shall cooperate with Ecology, and shall:

5 A. If agreed to by Ecology, prepare drafts of public notices and fact sheets at
6 important stages of the remedial action, such as the submission of work plans, Remedial
7 Investigation/Feasibility Study reports and engineering design reports. As appropriate, Ecology
8 will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of
9 Ecology's presentations and meetings;

10 B. Notify Ecology's project coordinator prior to the preparation of all press releases
11 and fact sheets, and before meetings with the interested public and local governments. Likewise,
12 Ecology shall notify EHA prior to the issuance of all press releases and fact sheets, and before
13 meetings with the interested public and local governments. For all press releases, fact sheets,
14 meetings, and other outreach efforts by EHA that do not receive prior Ecology approval, EHA
15 shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach
16 effort was not sponsored or endorsed by Ecology;

17 C. If agreed to by Ecology, participate in public presentations on the progress of the
18 remedial action at the Site. Participation may be through attendance at public meetings to assist in
19 answering questions, or as a presenter;

20 D. In cooperation with Ecology, assist in maintaining information repositories to be
21 located at the following locations:

22
23 **Department of Ecology**
24 **Northwest Regional Office, Central Files**
25 3190 160th Avenue SE
26 Bellevue, WA
425-649-7190

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Everett Public Library
2702 Hoyt Avenue
Everett, WA 98201
425-257-8000

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured ground water, surface water, soil sediment, and air monitoring data; remedial actions plans, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Decree shall be promptly placed in the Northwest Regional Office repository.

**XXVII. DURATION OF DECREE AND RETENTION OF JURISDICTION;
CERTIFICATIONS BY ECOLOGY**

This remedial program described in the Decree shall be maintained and continued until EHA has received written notification by Ecology that the requirements of this Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed by the Court. When dismissed, Section XVII (Covenant Not to Sue) and Section XVI (Contribution Protection) of this Decree, shall survive.

In order to facilitate the timely redevelopment of the Fenced Area, upon completion and confirmation of the remediation activities specified in the Scope of Work herein (the FCAP/FEIS, the Interim Action Report and the Final Design Report), Ecology may issue a Partial Certificate of Completion where appropriate on a parcel by parcel basis, after consulting with the City of Everett and after City of Everett approval of the Final Site Restoration Plan and work completed under that plan for any parcel in question, noting that redevelopment may proceed based only upon the implementation of any required institutional controls, including Restrictive Covenants that are made applicable to any parcel in question under the terms of this Decree. In the alternative, upon completion and confirmation of the remediation activities specified in the Scope of Work herein (the FCAP/FEIS, the Interim Action Report and the Final Design Report), after consultation with the City of Everett, and upon implementation of

1 institutional controls and City of Everett approval of the Final Site Restoration Plan and work
2 completed under that plan, Ecology will issue a Certificate of Completion.

3 **XXVIII. WITHDRAWAL OF CONSENT**

4 If the Court withdraws its consent, this Decree shall be null and void at the option of any
5 party and the accompanying complaint shall be dismissed without costs and without prejudice.
6 In such an event, no party shall be bound by the requirements of this Decree. This Section shall
7 not create a basis for withdrawal of consent or termination of this Decree other than those
8 created by the terms of this Decree or that exist by operation of law or equity.

9 **XXIX. IMPLEMENTATION OF REMEDIAL ACTION**

10 If Ecology determines that EHA has failed without good cause to implement the remedial
11 action, in whole or in part, Ecology may, after notice to EHA, perform any or all portions of the
12 remedial action that remain incomplete. If Ecology performs all or portions of the remedial action
13 because of the EHA's failure to comply with its obligations under this Decree, EHA shall
14 reimburse Ecology for the costs of doing such work in accordance with Section VIII (Ecology
15 Costs), provided that EHA is not obligated under this Section to reimburse Ecology for costs
16 incurred for work inconsistent with or beyond the scope of this Decree.

17 **XXX. INDEMNIFICATION**

18 EHA agrees to indemnify and save and hold the State of Washington, its employees, and
19 agents harmless from any and all claims or causes of action for death or injuries to persons or
20 for loss or damage to property arising from or on account of acts or omissions of EHA, its
21 officers, employees, agents, or contractors in entering into and implementing this Decree.
22 However, EHA shall not indemnify the State of Washington nor save nor hold its employees
23 and agents harmless from any claims or causes of action arising out of the negligent acts or
24 omissions of the State of Washington, or employees or agents of the State in implementing the
25 activities pursuant to this Decree.

1 **XXXI. CLAIMS AGAINST THE STATE**

2 EHA hereby agrees that it will not seek to recover any costs accrued in implementing the
3 remedial action required by this Decree from the State of Washington or any of its agencies.
4 This Section does not limit EHA from applying for grant funding from the Local Toxics Control
5 Account for a portion of the costs incurred in implementing this Decree. Except as provided
6 above, however, EHA expressly reserves its right to seek to recover any costs incurred in
7 implementing this Decree from any other PLP.

8 **XXXII. SEVERABILITY**

9 If any section, subsection, sentence or clause of this Decree is found to be illegal, invalid
10 or unenforceable, such illegality, invalidity or unenforceability will not affect the illegality or
11 enforceability of this Decree as a whole or of any other section, subsection, sentence or clause.

12 **XXXIII. EFFECTIVE DATE**

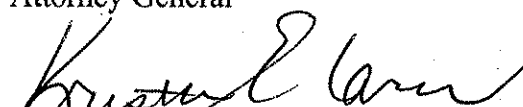
13 The Effective Date of this Decree is the final date when both the Decree is entered by
14 the Court and title to the Asarco Property vests in EHA. If EHA does not take title to the
15 Asarco Property, this Decree shall be void.

16 The undersigned Parties enter into this Prospective Purchaser Consent Decree on the
17 date specified below.

19 STATE OF WASHINGTON
20 DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE
Attorney General

21 

21 

22 James J. Pendowski
23 Program Manager
24 Toxics Cleanup Program

22 Kristie E. Carevich, WSBA No. 28018
23 Assistant Attorney General

24 Date: 9/24/04

24 Date: 9/24/04

HOUSING AUTHORITY OF THE CITY OF EVERETT

S. Bud Alkire

S. Bud Alkire
Executive Director

Date: 9/30/2004

ENTERED this _____ day of _____, 2004.

JUDGE
Snohomish County Superior Court

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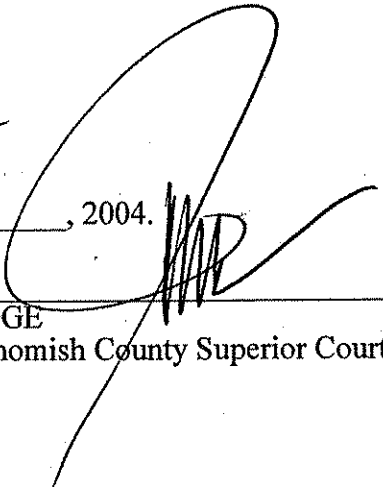
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HOUSING AUTHORITY OF THE CITY OF EVERETT


S. Bud Alkire
Executive Director

Date: 9/30/2004

ENTERED this 30 day of Sept, 2004.



JUDGE
Snohomish County Superior Court

FILED

SEP 30 2004

PAUL L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH

**STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT**

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

HOUSING AUTHORITY OF THE
CITY OF EVERETT,

Defendant.

NO.

04 2 12100 0

SUMMONS

TO: THE HOUSING AUTHORITY OF THE CITY OF EVERETT;

A lawsuit has been started against you in the above-entitled court by the State of Washington, Department of Ecology. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

The parties have agreed to resolve this matter by entry of a Consent Decree, a copy of which is also attached. Accordingly, this Summons shall not require the filing of an Answer.

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SUMMONS

1 Further, all disputes arising under this cause shall be resolved under the terms of the Consent
2 Decree.

3 DATED this 24th day of September, 2004.

4 CHRISTINE O. GREGOIRE
5 Attorney General

6 
7 KRISTIE CAREVICH, WSBA #28018
8 Assistant Attorney General
9 Attorneys for Plaintiff
10 State of Washington
11 Department of Ecology
12 (360) 586-6762

FILED

SEP 30 2004

DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH

**STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT**

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

HOUSING AUTHORITY OF THE
CITY OF EVERETT,

Defendant.

NO. **04 2 12170 0**

COMPLAINT

Plaintiff, State of Washington, Department of Ecology ("Ecology") alleges as follows:

I. DESCRIPTION OF ACTION

1. This action is brought on behalf of the State of Washington, Department of Ecology, to enter a settlement agreement, known as a Prospective Purchaser Consent Decree ("Decree") for a remedial action at a facility where there have been releases and/or threatened releases of hazardous substances.

2. The Complaint and settlement are limited to the scope of the Decree. The facility, or Site, is referred to as the Everett Smelter Site and consists of property generally located in northeast Everett, Washington, where hazardous substances released from historic smelter operations have come to be located. EHA intends to facilitate the cleanup and redevelopment of contaminated residential land in Everett, Washington, by purchasing property

1 and completing cleanup within a portion of the Site know as the "Fenced Area." The Fenced
2 Area includes both streets and other public rights of way (Public Property), and 22 vacant
3 residential-zoned tracts of real property (Asarco Property). After Asarco completion of cleanup
4 activities outside the terms of the Decree, EHA will purchase the Asarco Property, and will then
5 remediate portions of the Fenced Area pursuant to the terms and conditions of the Decree.

6 II. JURISDICTION

7 3. This Court has jurisdiction under RCW 70.105D, the Model Toxics Control Act
8 ("MTCA"). This Court has jurisdiction over the subject matter and over the parties pursuant to
9 MTCA. Venue is proper in Snohomish County, the location of the Site at issue.

10 4. Authority is conferred upon the Washington State Attorney General by RCW
11 70.105D.040(5)(a) to agree to a settlement with any person not currently liable for remedial
12 action at a facility, who intends to purchase, redevelop or reuse a site if, after public notice,
13 Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous
14 substances in compliance with cleanup standards under RCW 70.105D.030(2)(e). In addition,
15 Ecology must also find that the proposed redevelopment or reuse is not likely to contribute to
16 the existing releases or threatened releases or interfere with remedial actions that may be needed
17 on the Site or increase health risks to persons at or in the vicinity of the Site. Lastly, the
18 Attorney General must find that the settlement will yield substantial new resources to facilitate
19 the cleanup and expedite remedial action consistent with the rules adopted under RCW
20 70.105D. Ecology and the Attorney General have made the required finding. Under RCW
21 70.105D.040(4)(b), such a settlement must be entered as a Consent Decree issued by a court of
22 competent jurisdiction.

23 5. Ecology has determined that a release or threatened release of a hazardous
24 substance has occurred at the Site.

25 6. Ecology has given notice to the Housing Authority of the City of Everett
26 ("Everett Housing Authority" or "EHA") of Ecology's determination, that upon purchase of the

1 Asarco Property within the Fenced Area, EHA will be a potentially liable person as owner
2 and/or operator as defined in 70.105D.020(12) of the Site and notice that there has been a
3 release and/or threatened release of hazardous substances at the Site.

4 III. PARTIES

5 7. Plaintiff Ecology is an agency of the State of Washington responsible for
6 overseeing remedial action at Sites contaminated with hazardous substances under
7 Chapter 70.105D RCW.

8 8. Defendant is the Housing Authority of the City of Everett ("Everett Housing
9 Authority" or "EHA").

10 IV. FACTUAL ALLEGATIONS

11 9. The Fenced Area includes 22 residential-zoned tracts of real property (Asarco
12 Property) along with streets and other public rights of way (Public Property), generally located
13 south of North Broadway (SR 529), east of Hawthorne Street, west of East Marine View Drive
14 and north of Butler street, upon which the residential structures and improvements have been
15 demolished and are now surrounded by security fencing. The Fenced Area comprises one
16 portion of the uplands area of the Site. The Site consists of approximately 686 acres. The
17 Fenced Area portion of the Site consists of approximately 5 acres.

18 10. The Everett Smelter Site previously hosted a smelter plant that, at the turn of the
19 last century, was one of the largest industrial facilities in Everett. In 1894, the Puget Sound
20 Reduction Company began operating the smelter, refining ores primarily from the Monte Cristo
21 mining district. Some of the ore from the Monte Cristo mining district contained over
22 25 percent total arsenic. To recover arsenic from the ore, an arsenic processing plant was
23 constructed on the southern end of the Everett Smelter Site. The plant consisted of several
24 structures, including additional smoke stacks, flues, ovens and mills, and a large arsenic
25 processing building.

1 11. In 1903, a corporation that subsequently became ASARCO Incorporated
2 ("Asarco") bought and continued operating the smelter. Asarco subsequently dismantled the
3 smelter in 1914 and 1915.

4 12. Asarco sold the smelter and its surrounding land-holdings through a series of
5 transactions between 1914 and 1936 to different buyers, including the Weyerhaeuser Company
6 ("Weyerhaeuser"), the State of Washington Department of Transportation, the City of Everett
7 and Burlington Northern. In addition, 17.89 acres were purchased and subsequently developed
8 into residential neighborhoods. About 25 houses were built on property that is now within the
9 an area known as the "Fenced Area." The "Fenced Area" refers to the Former Arsenic
10 Trioxide Processing Area, which comprises one portion of the Site and is generally located
11 south of North Broadway (SR 529), east of Hawthorne Street, west of East Marine View Drive
12 and north of Butler street, upon which residential structures and improvements have been
13 demolished and are now surrounded by security fencing.

14 13. During an environmental investigation in 1990, Weyerhaeuser discovered an
15 outcrop of slag discovered on the hillside below East Marine View Drive. As part of the
16 investigation, slag, soil, and ground water samples were collected on Weyerhaeuser property
17 and analyzed for the presence of heavy metals. After receiving the data, Weyerhaeuser notified
18 Ecology that a release of a hazardous substance had occurred at the Everett Smelter Site.

19 14. Ecology conducted an initial investigation of the Smelter Site in December 1990.
20 The investigation included a site visit, historic research of the area, and a review of the data
21 previously submitted by Weyerhaeuser.

22 15. Ecology conducted a Site Hazard Assessment (SHA) of the Smelter Site in
23 February 1991. The SHA consisted of a magnetic survey, to attempt to locate the extent of
24 buried slag, and collection of 20 surface soil samples that were analyzed for metals. Laboratory
25 analysis demonstrated releases of arsenic, cadmium, and lead to the soils found in the
26 residential area on the site.

1 16. Ecology conducted a "Pre-Remedial Investigation" (Pre-RI) in May 1991. The
2 Pre-RI consisted of the preparation of a site map and collection of additional soil samples. The
3 purpose of the investigation was to further characterize the nature and extent of elevated
4 concentrations of residual metals that were identified in the SHA. Results of the Pre-RI
5 confirmed releases of arsenic, cadmium, and lead in surface soils throughout the study area.

6 17. By letter dated August 29, 1991, Ecology notified Asarco of its status as a
7 "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

8 18. In April 1992 Ecology issued Enforcement Order No. DE92TC-N147 to Asarco.
9 This Order required Asarco to perform a Remedial Investigation/Feasibility Study and certain
10 Interim Actions to limit exposure of residents to arsenic and other metals at the Smelter Site.

11 19. In March 1994, Ecology issued the first amendment to Enforcement Order
12 No. DE92TC-N147. The first amendment required Asarco to perform additional interim
13 actions and prepare an interim deliverable remedial investigation report. The amendment also
14 required Asarco to undertake additional sampling for the remedial investigation and extended
15 the schedule.

16 20. In 1994 and 1995, Asarco voluntarily implemented a property buy-out program
17 for the homes located in the Fenced Area. All but two of the homes were purchased as part of
18 this program.

19 21. In September 1995 Ecology issued Enforcement Order No. DE95TC-N350 to
20 Asarco. This Order required Asarco to immediately take action to stop the exposure to arsenic
21 of residents, pets, and others who resided in the two remaining houses at 520 and 534 East
22 Marine View Drive, within the Fenced Area. Thereafter, Asarco purchased these properties and
23 the families vacated them.

24 22. Pursuant to Enforcement Order DE92TC-N147, Asarco prepared an Interim
25 Deliverable report in April 1994 and a Remedial Investigation and Feasibility Study (RI/FS)
26

1 report (*Everett Smelter Remedial Investigation and Feasibility Study, prepared by*
2 *Hydrometrics, Inc. for Asarco Inc. and dated September 1995*) for most of the study area.

3 23. Based on analytical data in the RI/FS report, there is evidence of arsenic and lead
4 in ground water and arsenic and lead in surface water on the Site. Based on other analytical
5 data collected, there is evidence of arsenic and lead in house dust on the Site.

6 24. Subsequent to issuance of Enforcement Order Nos. DE92TC-N147 and
7 DE95TC-N350 Asarco expanded its property buy-out program and purchased all but fifteen of
8 the residences in the area south of Broadway, east of Balsam Lane, north of Butler Street, and
9 west of East Marine View Drive. Since Asarco's purchase, all of the homes located within the
10 Fenced Area have been vacated and demolished. Many of the homes adjacent to the Fenced
11 Area have also been vacated, although Asarco is currently leasing some of these properties,
12 known as the Asarco Houses, for residential use.

13 25. After public notice and comment, Ecology issued the Integrated Final Cleanup
14 Action Plan and Final Environmental Impact Statement for one portion of the Everett Smelter
15 Site (FCAP/FEIS) on November 19, 1999. The FCAP/FEIS required, among other things, that
16 all material within the Fenced Area with an arsenic concentration greater than 3,000
17 milligrams/kilogram (mg/kg, equivalent to parts per million) be excavated and sent off-site to a
18 facility permitted to accept such waste. This requirement was based on concern over leaving
19 high levels of contamination in an urban neighborhood that, if exposed, could constitute an
20 immediate threat to human health. The FCAP/FEIS also requires remediation of the Asarco
21 Houses through removal and containment of material above cleanup levels and remediation
22 levels specified in the FCAP/FEIS.

23 26. As documented in the RI/FS and FCAP/FEIS, the remedial action to be
24 implemented pursuant to this Decree will achieve partial cleanup of the Site by achieving
25 cleanup standards for one portion of the Site, the Fenced Area. The remedial action to be
26 implemented under the FCAP/FEIS includes (1) removal of all material from the Fenced Area

1 in excess of 3,000 mg/kg of arsenic, followed by (2) removal of all material from the Fenced
2 Area between 150 and 3,000 mg/kg of arsenic and the placement of a minimum of two feet of
3 clean fill, and (3) compliance monitoring activities. Because treatment, excavation, disposal,
4 and/or recycling of all hazardous substances at this portion of the Site is not practicable, the
5 remedy for the Fenced Area of the Site includes elements of on-site containment, through on-
6 site capping, as set forth in the FCAP/FEIS. The remedy therefore includes monitoring and
7 institutional controls.

8 27. In January 2000 Asarco issued the draft *Comprehensive Lowland Area Remedial*
9 *Investigation Report* (LL Report). Asarco's report concluded that it is likely that remediation
10 activities planned for the Fenced Area would be successful in intercepting and removing current
11 sources of metals to ground water and surface water. Asarco's report found that the best
12 approach for addressing elevated arsenic concentrations was to begin with the Fenced Area.

13 28. On June 10, 2002, Ecology issued Enforcement Order No. 02TCPNR-4059 to
14 Asarco. Enforcement Order No. 02TCPNR-4059 required Asarco to perform an interim action
15 to remove the most contaminated material within the Fenced Area, consisting of arsenic
16 concentrations exceeding 3,000 mg/kg. Specifically, the enforcement order required Asarco to
17 excavate and send to an off-site facility all flue dust, arsenic trioxide, soil, and any other
18 material with an arsenic concentration exceeding 3,000 mg/kg.

19 29. Ecology amended Enforcement Order No. 02TCPNR-4059 in December of
20 2002, to require Asarco to include removal of material outside of the Fenced Area with arsenic
21 concentrations exceeding 3,000 mg/kg. The material outside the Fenced Area that is known to
22 have concentrations exceeding the 3,000 mg/kg limit is located along East Marine View Drive.

23 30. Enforcement Order No. 02TCPNR-4059 required Asarco to submit a work plan
24 for accomplishing the required cleanup work. Asarco submitted a draft work plan in December
25 2002. The work plan proposed accomplishing the required work in 2003 and 2004, but
26 acknowledged that delay of removal of material until 2004 would violate the Order. Asarco's

1 work plan indicated Asarco intended to send excavated material to its Asarco Tacoma Smelter,
2 but contained a contingency plan for actions to implement if the material could not be sent to
3 the Asarco Tacoma Smelter.

4 31. In a letter dated March 18, 2003, Ecology approved Asarco's December 2002
5 draft work plan.

6 32. On June 20, 2003, after correspondence established Asarco's inability to meet
7 the April 30, 2003 mobilization date stated in Enforcement Order No. 02TCPNR-4059, Ecology
8 filed suit in Snohomish County Superior Court. The suit sought injunctive relief to cause
9 Asarco to come into compliance with Enforcement Order No. 02TCPNR-4059, and adhere to
10 the schedule which had been set out in the Ecology approved December 2002 work plan.

11 33. On October 20, 2003, the Court entered an Agreed Judgment requiring Asarco to
12 come into compliance with Enforcement Order No. 02TCPNR-4059 and to comply with an
13 agreed schedule/timeline to achieve final removal of material with arsenic concentrations
14 exceeding 3,000 mg/kg by October 31, 2004 and to submit to Ecology a draft As-Built Report
15 documenting such removal by December 31, 2004.

16 34. On June 16, 2004, EHA and Asarco entered into a Purchase and Sale Agreement
17 for the Asarco Property and the Asarco Houses.

18 35. The City of Everett has conducted land use planning under Ch. 36.70A RCW,
19 and the Site is designated 1.3, Single Family Residential, by the Everett Comprehensive Plan.
20 The Site has been used for residential purposes and is zoned R-2, single family medium density
21 residential. Any hazardous substances in soil that may remain on portions of the Fenced Area
22 after the remedial action has been completed pursuant to this Decree will not pose a threat to
23 human health and the environment. In order to enable the work in this Decree to proceed, the
24 City of Everett has agreed to take certain actions, including guaranteeing an EHA loan, granting
25 EHA powers as a community renewal agency, and abandoning certain rights of way and
26 utilities. In a letter dated May 18, 2004, which is attached as Exhibit I to this Decree and

1 incorporated herein by reference, Ecology has confirmed to the City that it does not consider the
2 City to be acquiring liability under MTCA for its role in supporting EHA's purchase and
3 cleanup of these properties.

4 36. EHA intends to facilitate the redevelopment of the Fenced Area portion of the
5 Site for single family or other residential purposes consistent with applicable City of Everett
6 comprehensive plan designations and zoning regulations as those designations may be revised.
7 EHA intends, as necessary, to seek comprehensive plan and zoning changes to permit higher
8 density residential development than may be allowed under current designations and
9 regulations.

10 V. CAUSES OF ACTION

11 37. Plaintiff realleges paragraphs 1 through 36, above.

12 38. Ecology alleges that, upon purchase of the Property, EHA will be responsible for
13 remedial action at the Site pursuant to Chapter 70.105D RCW and Chapter 173-340 WAC.

14 39. Ecology and EHA have entered into a Prospective Purchaser Consent Decree
15 requiring remedial actions at the Site upon purchase of the Property by the Defendant. The
16 Decree has been subject to public notice and comment under RCW 70.105D.040(4)(a), and
17 public hearings were held on April 27th, 2004 and July 7, 2004. Several comments were
18 received, and Ecology has reviewed and considered the comments.

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VI. PRAYER FOR RELIEF

WHEREAS Ecology and EHA have voluntarily entered into a proposed Decree,
Ecology requests that the Court, pursuant to RCW 70.105D.040, approve and order the entry of
the proposed Decree. Ecology further requests that the Court retain jurisdiction to enforce the
terms of the Decree.

DATED this 24th day of September, 2004.

CHRISTINE O. GREGOIRE
Attorney General

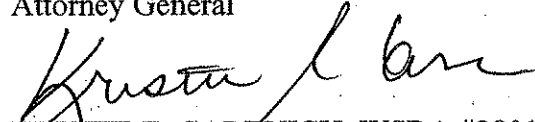

KRISTIE E. CAREVICH, WSBA #28018
Assistant Attorney General
Attorneys for Respondent
State of Washington
Department of Ecology
(360) 586-6762

EXHIBIT A
ASARCO PROPERTY LEGAL DESCRIPTION

PARCEL A:

LOTS 18 THROUGH 23 INCLUSIVE, 43 THROUGH 48, INCLUSIVE, THE NORTH HALF OF LOT 49, 63 THROUGH 66 INCLUSIVE, BRIDGEWAY, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 10 OF PLATS, PAGE 119, RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

(003966-000-018-00; 003966-000-019-00; 003966-000-020-00; 003966-000-022-00;
003966-000-043-01; 003966-000-043-02; 003966-000-045-00; 003966-000-046-00;
003966-000-047-01; 003966-000-047-02; 003966-000-049-01; 003966-000-063-00;
003966-000-064-00; 003966-000-065-00)

PARCEL B:

LOT 17, AND ALL THAT PORTION OF LOT 16, BRIDGEWAY, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 10 OF PLATS, PAGE 119, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 16;
THENCE SOUTHEASTERLY ALONG THE WESTERLY LINE OF SAID LOT 16, 20 FEET;
THENCE IN A NORTHEASTERLY DIRECTION TO A POINT ON THE EAST LINE OF SAID LOT 16, 25 FEET SOUTHERLY FROM THE NORTHEAST CORNER OF SAID LOT;
THENCE NORTHERLY ALONG SAID EASTERLY LINE 25 FEET TO THE NORTHEAST CORNER OF SAID LOT 16;
THENCE SOUTHWESTERLY ALONG THE NORTH LINE OF SAID LOT 16 TO THE POINT OF BEGINNING.

(003966-000-016-00)

PARCEL C:

LOTS 41 AND 42, BRIDGEWAY ADDITION, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 10 OF PLATS, PAGE 119, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

THENCE NORTH 21°45'30" WEST ALONG THE NORTHEASTERLY LINE OF SAID LOT, A DISTANCE OF 25 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE FROM SAID POINT RUN SOUTHWESTERLY ON A STRAIGHT LINE 113 FEET, MORE OR LESS, TO A POINT ON THE SOUTHWESTERLY LINE OF SAID LOT THAT IS MIDWAY AND EQUIDISTANT FROM THE MOST WESTERLY CORNER OF SAID LOT AND THE MOST SOUTHERLY CORNER THEREOF;

THENCE NORTH 22°35'20" WEST ALONG THE SOUTHWESTERLY LINE OF LOTS 70 AND 71, A DISTANCE OF 60 FEET, MORE OR LESS, TO THE SOUTHERLY RIGHT OF WAY LINE OF THE STATE HIGHWAY OVER SAID LOT 71, AS CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED UNDER AUDITOR'S FILE NUMBER 1045343;

THENCE NORTHEASTERLY FOLLOWING SAID RIGHT OF WAY LINE, A DISTANCE OF 45 FEET, MORE OR LESS, TO THE NORTHWESTERLY LINE OF SAID LOT 71;

THENCE NORTH 68°07'50" EAST 75 FEET, MORE OR LESS, TO THE MOST NORTHERLY CORNER OF SAID LOT 71;

THENCE SOUTH 21°45'30" EAST 75 FEET TO THE POINT OF BEGINNING.

(003966-000-070-00)

PARCEL G:

LOT 73 AND THE NORTH 25 FEET OF LOT 74, BRIDGEWAY, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 10 OF PLATS, PAGE 119, RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

TOGETHER WITH VACATED PORTION OF HAWTHORNE STREET ADJACENT TO AND ABUTTING THEREON AS VACATED BY ORDER NO. 3246 RECORDED UNDER AUDITOR'S FILE NUMBER 917761, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, WHICH WOULD ATTACH BY OPERATION OF LAW.

(003966-000-073-00)

PARCEL H:

THE SOUTH HALF OF LOT 74, AND ALL OF LOT 75 AND THE NORTHERLY 25 FEET OF LOT 76 OF BRIDGEWAY, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 10 OF PLATS, PAGE 119, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

TOGETHER WITH VACATED PORTION OF HAWTHORNE STREET ADJACENT TO AND ABUTTING THEREON AS VACATED BY ORDER NO. 3246 RECORDED

THENCE ANGLE TO THE RIGHT OF 90° FOR 158.2 FEET TO THE TRUE POINT OF BEGINNING;

TOGETHER WITH THAT PORTION OF THE NORTHEASTERLY 10 FEET OF VACATED HAWTHORNE STREET (FORMERLY GRAND AVENUE) ADJACENT THERETO AND ABUTTING THEREON;
EXCEPT PORTION CONVEYED TO THE STATE OF WASHINGTON FOR HIGHWAY BY DEED UNDER RECORDING NUMBER 1095440.

(290508-004-014-00)

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

EXHIBIT B
MAPS DEPICTING THE EVERETT SMELTER SITE
AND
RELEVANT PORTIONS THEREOF

4,38 D:\5377\5377-83.DWG

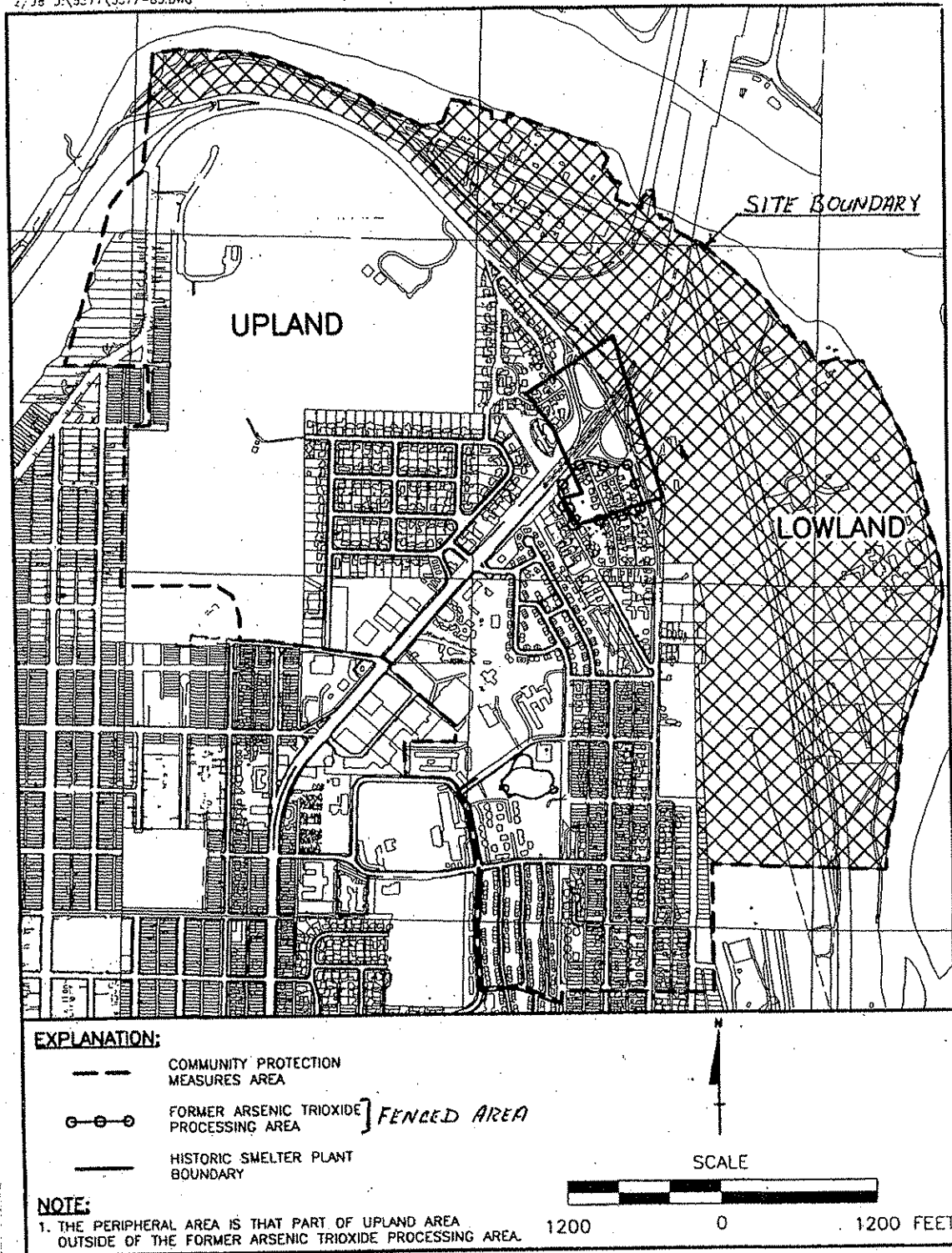


Figure 1-2: Site Features.

LEGEND

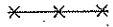


ASARCO PROPERTY



ASARCO HOUSES

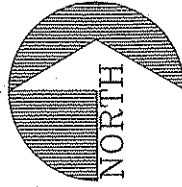
APPROXIMATE LOCATION OF HISTORICALLY OWNED ASARCO PROPERTY BOUNDARY



SECURITY FENCE

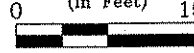


PUBLIC PROPERTY TO BE REMEDIATED



SCALE

(In Feet) 0 150



ASARCO
Consulting, Inc.

PROPERTY MAP
ASARCO INCORPORATED
EVERETT, WASHINGTON
04/19/04

EXHIBIT

B

EXHIBIT C
CLEANUP ACTION PLAN (FCAP/FEIS)

EVERETT SMELTER SITE

Everett, Washington

INTEGRATED FINAL CLEANUP ACTION PLAN and FINAL ENVIRONMENTAL IMPACT STATEMENT for the UPLAND AREA

Volume I

See separate bound volumes



Puget Sound Reduction Works facility looking east. December 10, 1895.
Duryee Collection. Courtesy of Everett Public Library

by
Washington State Department of Ecology

November 19, 1999

EXHIBIT D
RESTRICTIVE COVENANTS 1 AND 2

RESTRICTIVE COVENANT 1
[NAME OF PROPERTY OWNER, AND NAME OF PROPERTY]

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by [name of property owner], its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in the following document[s]:

- *[LIST ALL APPLICABLE DOCUMENTS. INSERT THE DATE AND TITLE FOR EACH DOCUMENT LISTED INCLUDING THE NAME OF THE PERSON(S) OR BUSINESS WHO PREPARED THE DOCUMENT.]*

These documents are on file at Ecology's Northwest Regional Office.

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of [specifically list substances] which exceed the Model Toxics Control Act Method [list applicable Method A or Method B] for soil and groundwater established under WAC 173-340-740.

The undersigned, [name property owner] is the fee owner of real property (hereafter "Property") in the County of [name of county], State of Washington that is subject to this Restrictive Covenant. The legal description of the Property is as follows:

LEGAL DESCRIPTION

[Insert legal description or include as an attachment and incorporate by reference]

[Name property owner] makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. No groundwater may be taken for any purposes from the Property.

INSERT SECTION HERE IF CONTAMINATED SOIL REMAINS ON PROPERTY UNDERNEATH A STRUCTURE OR PAVEMENT, etc: A portion of the Property contains [specifically list substances] contaminated soil located [specifically describe where located, i.e. under the southeast portion of Building 10 in the northeast portion of the Property]. The Owner

shall not alter, modify, or remove the existing structure[s] in any manner that may result in the release or exposure to the environment of that contaminated soil or create a new exposure pathway without prior written approval from Ecology, including prior approval by Ecology of the Owner's plans to properly manage contaminated soil.

Section 2. Soil contamination remains on *[portions of]* the property underneath a cap consisting of a minimum of two feet of clean soil. *[DESCRIBE WITH SPECIFICITY AND LEGAL DESCRIPTION WHERE ON THE PROPERTY IN QUESTION THE SOIL IS CAPPED]*. Any activity on *[these areas or in close proximity to these areas of]* the Property that may result in the release or exposure of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway is prohibited without prior written approval from Ecology, including prior approval by Ecology of the Owner's plans to properly manage contaminated soil.

Examples of activities requiring Ecology approval include activities such as drilling, digging, bulldozing or other earthwork when any such activity penetrates the fill by more than 18 inches (except for the installation of fence posts as discussed further below), or the placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability. Prior Ecology approval is not required when activity is undertaken that affects only the top 18 inches or less of the soil cap and therefore does not result in exposure of any contaminated soils that remain under the cap, provided such activity does not stress the surface beyond its load bearing capability, and provided a minimum of two feet of clean soil will be in place at the completion of the activity.

The Owner may, however, install fence posts or other posts when doing so would disturb soil below a depth of 18 inches, without prior Ecology approval. Contaminated soil brought to the surface by installation of fence posts or other posts must be placed into containers or covered with plastic sheeting to prevent contact, especially contact by children. The contaminated soil may be returned to the hole as fill around the fence post. At the conclusion of the post installation the contaminated soil must either be (1) beneath two feet of clean fill, or (2) if placed within two feet of the surface, capped with a minimum of 3 inches of concrete or asphalt at the top of the hole. Any contaminated soil which cannot be managed on site must be disposed of off-site at a properly permitted facility.

If structures, paving, or asphalt are constructed or placed on the property at any point in the future, and contaminated soil is contained beneath the structure, paving, or asphalt, the Owner shall not alter, modify, or remove the structures, paving, or asphalt in any manner that may result in the release or exposure to the environment of that contaminated soil or create a new exposure pathway without prior written approval from Ecology, including prior written approval of the Owner's plans to properly manage contaminated soil.

Section 3. Except as provided in Section 2, any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment, or that may result in a release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action or create a new exposure pathway, is prohibited.

Section 4. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

[NAME OF PROPERTY OWNER]

[DATE SIGNED]

[Property Owner must have this Restrictive Covenant notarized]

RESTRICTIVE COVENANT 2
[NAME OF PROPERTY OWNER, AND NAME OF PROPERTY]

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by [name of property owner], its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in the following document[s]:

- [LIST ALL APPLICABLE DOCUMENTS. INSERT THE DATE AND TITLE FOR EACH DOCUMENT LISTED INCLUDING THE NAME OF THE PERSON(S) OR BUSINESS WHO PREPARED THE DOCUMENT.]

These documents are on file at Ecology's Northwest Regional Office.

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of [specifically list substances] which exceed the Model Toxics Control Act Method [list applicable Method A or Method B] for groundwater established under WAC 173-340-740.

The undersigned, [name property owner] is the fee owner of real property (hereafter "Property") in the County of [name of county], State of Washington that is subject to this Restrictive Covenant. The legal description of the Property is as follows:

LEGAL DESCRIPTION

[Insert legal description or include as an attachment and incorporate by reference]

[Name property owner] makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. No groundwater may be taken for any purposes from the Property.

Section 2. Any activity on the Property that may interfere with the continued protection of human health and the environment, or that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from

Ecology.

Section 3. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 4. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 5. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 6. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action.

Section 7. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

[NAME OF PROPERTY OWNER]

[DATE SIGNED]

[Property Owner must have this Restrictive Covenant notarized]

EXHIBIT E
PUBLIC PARTICIPATION PLAN

**Everett Smelter Site
Fenced and Adjacent Areas
Public Participation Plan
for
Cleanup 2004**



WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

Prepared by
Washington State Department of Ecology
3190 160th Avenue SE
Bellevue, WA 98008-5452

April 2004

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Figure 2	Property Ownership.....	6

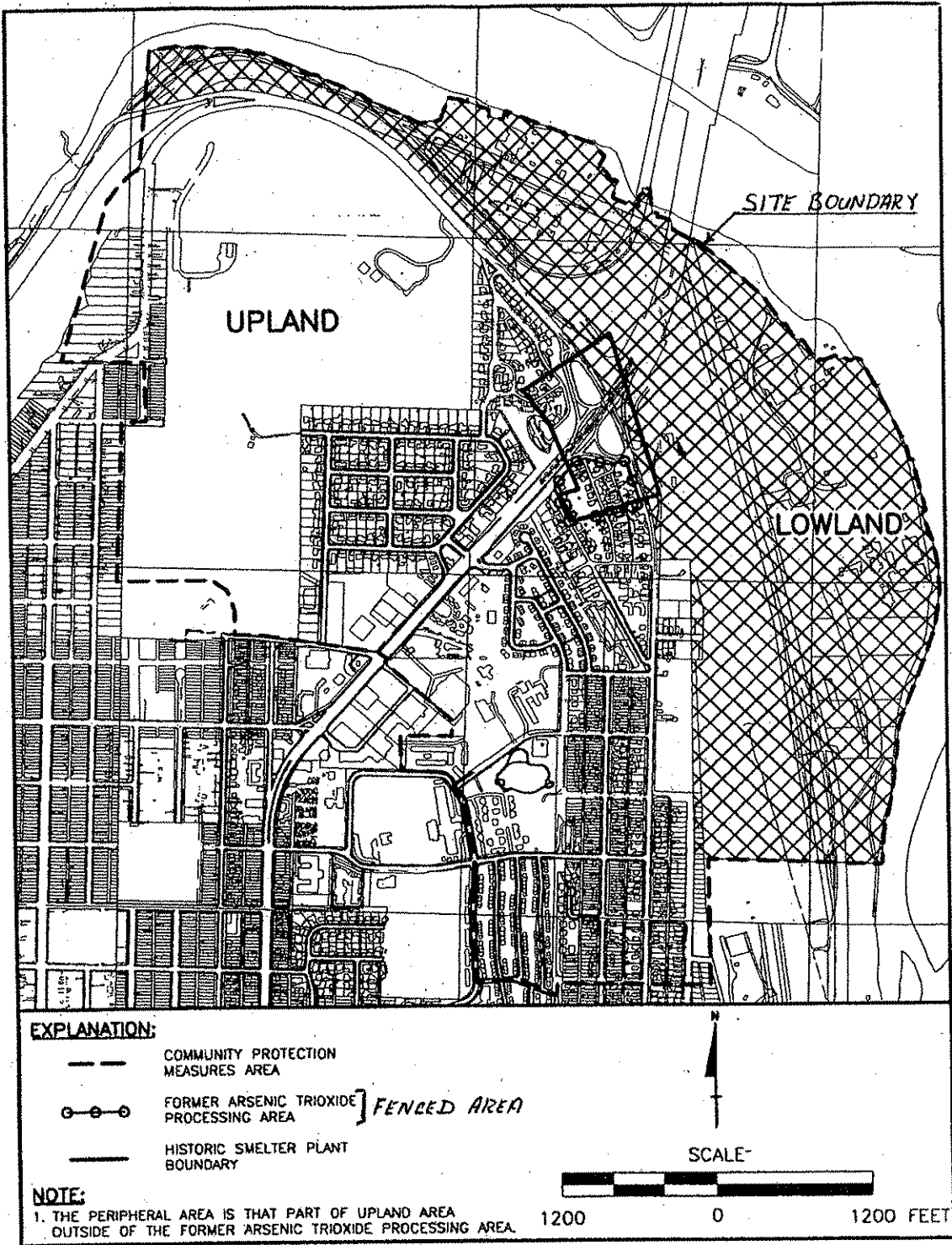


Figure 1. Site Location with Fenced Area

In the following years, the property was sold and developed into residential, commercial, industrial and public use sections.

Asarco completed investigation of the site and submitted a report (the Remedial Investigation and Feasibility Study) to Ecology in 1995. Public comment on the report was solicited at the end of 1995. Ecology reviewed the comments received during the public comment period and began developing a Cleanup Action Plan for the site.

Also in 1997, Ecology and Asarco began a mediated process to make major cleanup decisions for the Cleanup Action Plan. Other stakeholders were invited to participate to move toward an efficient, quick cleanup. Mediation concluded without reaching agreement in August 1998, and Asarco filed a lawsuit in which the company sought to be dismissed as the potentially liable party for the cleanup.

Ecology prepared an Integrated Draft Cleanup Action Plan and Draft Environmental Impact Statement for the residential and commercial portion of the site. This portion of the site, called the upland area, is that area west of the low-lying industrial area along the Snohomish River. This plan was presented for public comment in January 1999. Ninety citizens, governmental agencies and private parties commented. The Integrated Final Cleanup Action Plan and Final Environmental Impact Statement were distributed to the public in November 1999.

In December 1999, a Superior Court decision upheld Asarco's liability for some parts of the site and rejected it for others. Both Ecology and Asarco appealed to the Washington State Supreme Court. The state Supreme Court remanded the case to Superior Court in April 2002, finding that there were not sufficient facts for the Court to reach a decision. Ecology and Asarco subsequently agreed to stay further litigation while addressing the Fenced Area (see next paragraph).

Ecology issued an Enforcement Order to Asarco on June 10, 2002, requiring cleanup of the most contaminated material within the Everett Smelter site. Specifically, the Order called for material with arsenic concentrations above 3,000 parts per million be excavated and disposed of off site. This material is primarily within the Fenced Area, with a small amount immediately adjacent to this area under East Marine View Drive.

Asarco prepared a plan for excavating the material with arsenic concentrations above 3,000 parts per million as required by the Order. The plan also provides for cleaning up material with arsenic concentrations above 150 parts per million in the Fenced Area and for cleaning up selected residential properties adjacent to the Fenced Area. Within the Fenced Area, two feet of clean fill are to be imported to cover the soil with arsenic concentrations between the cleanup level (20 parts per million) and 150 parts per million. At the conclusion of the work, the entire area will be cleaned up to standards which will allow residential use. Contaminated soil will remain on the properties at depths where it is unlikely that people will come into contact with it. Institutional controls will be used (property owner notification, a marker cloth at the top of the contaminated soil) to help

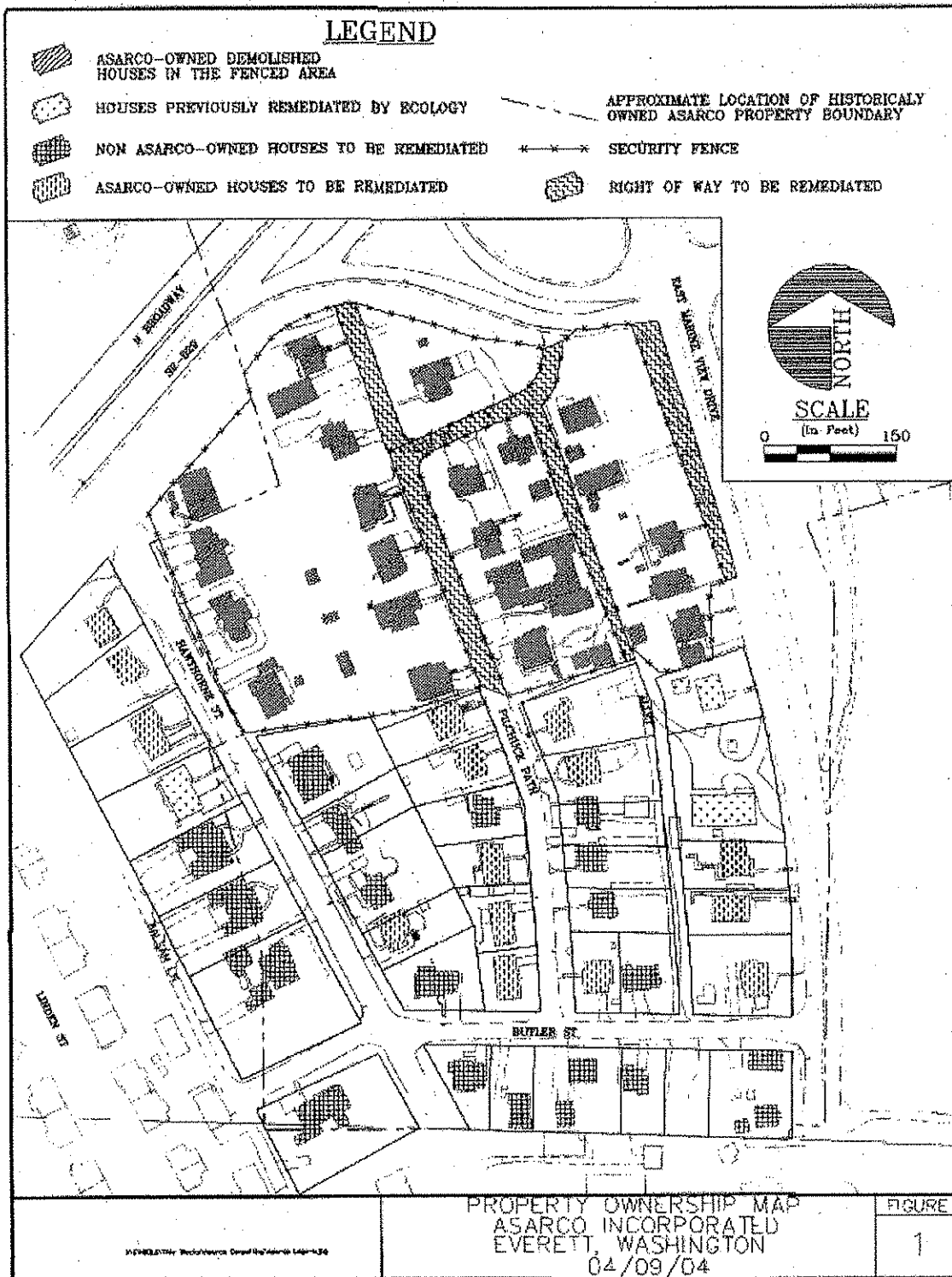


Figure 2. Property Ownership

Hours: Monday through Thursday, 10 a.m. to 9 p.m.
Friday and Saturday, 10 a.m. to 6 p.m.
Sunday, 1 p.m. to 5 p.m.

WA Department of Ecology - all major documents and complete project records
3190 160th Avenue SE
Bellevue, WA 98008
425-649-7190 (call for an appointment)
Hours: Monday through Thursday, 8 a.m. to 5 p.m.

While not an official information repository for the site, the Asarco Everett Information Center has most site documents available. Asarco's information center is located at 545 Hawthorne Street in Everett. Call for hours: 425-259-0822.

Some site information also is posted on Ecology's web site at
http://www.ecy.wa.gov/programs/tcp/sites/asarco/es_main.html

Site Register

The *Site Register* is a bimonthly publication produced by Ecology's Toxics Cleanup Program to announce all of its public meetings and comment periods, as well as many other activities. To receive the *Site Register*, contact Linda Thompson at (360) 407-6069 or by e-mail at ltho461@ecy.wa.gov. It also is available on Ecology's web site at http://www.ecy.wa.gov/programs/tcp/pub_inv/pub_inv2.html.

Mailing List

A mailing list for the Everett Smelter site is maintained by Ecology. The list includes individuals, groups, public agencies, elected officials, private businesses, potentially affected parties, and other known interested parties. The list is updated as needed.

Please contact Rebekah Padgett at 425-649-7257 or by e-mail at rpad461@ecy.wa.gov if you would like to have your address added, changed, or deleted from this mailing list.

Fact Sheets

Fact sheets will be mailed to persons on the mailing list at the beginning and completion of the 2004 cleanup activities. Additional fact sheets may be sent out as the cleanup process progresses.

Signs and Updates

Signs will be posted in the neighborhood with contact information and a description of the work being performed. Updates will be posted periodically on the signs outlining what has been accomplished what will be accomplished in upcoming steps.

Larry Altose, Public Information Officer (press contact),
3190 160th Avenue SE
Bellevue, WA 98008-5452
425-649-7009
lalt461@ecy.wa.gov

Asarco

Clint Stanovsky
Asarco Everett Information Center
545 Hawthorne Street
Everett, WA 98201
(425) 259-0822
cstanovsky@alum.mit.edu

Everett Housing Authority

Darcy Walker, Smelter Site Project Manager
Housing Authority of the City of Everett
P.O. Box 1547
Everett, WA 98206-1547
425-303-1117
darcyw@evha.org

EXHIBIT F
PROPOSED SCHEDULE

Schedule for 150 – 3,000 ppm cleanup at the Fenced Area. Dates may be modified with approval by Ecology.

- On or before 01 September 2004 Contractor mobilizes to the site.
- 30 October 2004 – Residential soils removal complete.
- 31 October 2004 – Site secured for winter.
- 01 September 2005 – Cap installed and hydroseeded (may be extended with consent of Ecology and the City of Everett).
- June 2006 – Cap installation completed at properties with demolished homes (if extension approved with the consent of Ecology and the City of Everett).

EXHIBIT G
INTERIM ACTION REPORT
AND
FINAL DESIGN REPORT

**INTERIM ACTION REPORT
FENCED AREA CLEANUP
EVERETT SMELTER SITE**

Public Review Draft

*Approved as Final
March 18, 2003
David L. Smith*

Prepared for:

ASARCO, Incorporated
5219 N Shirley St
Suite 101
Tacoma, WA 98407

Please see separate bound volume.

Prepared by:

Asarco Consulting, Inc.
5219 N Shirley St
Suite 100
Tacoma, WA 98407

December 2002

Everett Smelter/SIT 15.7
Site Mgr Copy

**FINAL DESIGN REPORT
EVERETT SMELTER SITE**

FINAL

Please see separate bound volume and engineering drawings

Prepared by:

ASARCO Consulting, Inc.
5219 N Shirley St
Suite 100
Tacoma, WA 98407

March 29, 2004

**EXHIBIT H
LETTER FROM EHA TO ECOLOGY
ASSERTING
INNOCENT PURCHASER DEFENSE**

FOSTER PEPPER & SHEFFELMAN PLLC

ATTORNEYS AT LAW



April 20, 2004

David South
Washington State Department of Ecology
3190 - 160th Avenue SE
Bellevue, WA 98008-5452

Re: Everett Housing Authority Property Ownership in ASARCO Everett
Study Area

Dear Dave:

As part of the Everett Housing Authority ("EHA") application for a Prospective Purchaser Agreement Consent Decree, EHA is providing you with this letter describing EHA's ownership of property within the ASARCO Everett Smelter area. Pursuant to RCW 70.105D.040(3)(b), EHA believes that, to the extent any of the property owned by EHA is part of the Everett ASARCO "Facility", at the time of its purchases, EHA had no reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for remedial action, was released or disposed of on, in or at the property purchased by EHA. This letter describes the properties owned by EHA, and the inquiry undertaken by EHA in connection with the purchases.

1. Baker Heights Development, Baker View Apartments. The Baker Heights Development was purchased by EHA in 1951. It is located on the 1200 - 1400 blocks of Poplar, Larch, Hemlock and the west side of Pine, and includes 2605 15th Street. This development was built by EHA under the Federal Housing Program in 1943. Title was transferred to EHA in 1951. At the time EHA took title to the property, EHA had no knowledge or reason to believe that the property was potentially contaminated by the ASARCO Smelter operations. In 1951, standard practice did not include conducting "Phase I" environmental assessments or other due diligence activities. Because EHA could not have known that the site was potentially contaminated, EHA should not be treated as a liable party under MTCA based on its ownership of the Baker Heights development.

Direct Phone
(206) 447-8940

Direct Facsimile
(206) 749-1924

E-Mail
DelaJ@foster.com

1111 THIRD
AVENUE
Suite 3400
SEATTLE
Washington
98101-3299

Telephone
(206)447-4400
Facsimile
(206)447-9700
Website
WWW.FOSTER.COM

ANCHORAGE
Alaska

PORTLAND
Oregon

SEATTLE
Washington

SPOKANE
Washington

April 20, 2004
Page 3

Please contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'J E Delaney', written in a cursive style.

Joseph E. Delaney

JED:klh

cc: Bud Alkire
Darcy Walker



5219 North Shirley
Suite 100
Ruston, WA 98407
(253) 752-1470
FAX (253) 752-7663
www.hydrometrics.com

March 4, 1999

Bud Alkire, Director of Rentals
Everett Housing Authority
P.O. Box 1547
Everett, WA 98206

RE: Soil Sample Results For 12 Pines Apartments

Dear Bud:

I have attached a data validation summary for the samples collected at the properties near Poplar and 12th Street (12 Pines Apartments) as you requested. Earlier, you were notified that visual inspection of the data did not indicate any quality control violations for the arsenic results.

Upon completion of data validation, all quality control criteria were met except that four field duplicate samples were out of control limits for lead analyses. However, it is noted that both sample results (original and duplicate) for the four sites are well below the Method A residential cleanup level of 250 mg/kg (see page 2 of the attached memorandum).

If you have any questions, please call me.

Sincerely,

Hydrometrics, Inc.

Steve Thompson
Project Manager

cc: Tom Aldrich, Asarco

Attachment

Quality Control Violations for Everett Housing Authority, November 1998 XRF Data

The PB RPD was out of range for the field replicate EVT-9811-04-B, site 04. The original value was 90, the duplicate sample EVT-9811-04-BD value was < 20, and the RPD *OUT* $|70| > 40$. The following results for the site 04, sample date 11/17/98, and using the first 0 characters of the sample number have been flagged with 'UJ4,FLDUP' or 'J4,FLDDUP': EVT-9811-04-A, EVT-9811-04-AD, EVT-9811-04-B, EVT-9811-04-BD, EVT-9811-04-C, EVT-9811-04-CD, EVT-9811-04-D, EVT-9811-04-DD, EVT-9811-04-E, EVT-9811-04-ED

The PB RPD was out of range for the field replicate EVT-9811-06-A, site 06. The original value was 96, the duplicate sample EVT-9811-06-AD value was 53, and the RPD *OUT* $|43| > 40$. The following results for the site 06, sample date 11/17/98, and using the first 0 characters of the sample number have been flagged with 'UJ4,FLDUP' or 'J4,FLDDUP': EVT-9811-06-A, EVT-9811-06-AD, EVT-9811-06-B, EVT-9811-06-BD, EVT-9811-06-C, EVT-9811-06-CD, EVT-9811-06-D, EVT-9811-06-DD, EVT-9811-06-E, EVT-9811-06-ED

The PB RPD was out of range for the field replicate EVT-9811-18-A, site 18. The original value was < 20, the duplicate sample EVT-9811-18-AD value was 73, and the RPD *OUT* $|53| > 40$. The following results for the site 18, sample date 11/17/98, and using the first 0 characters of the sample number have been flagged with 'UJ4,FLDUP' or 'J4,FLDDUP': EVT-9811-18-A, EVT-9811-18-AD, EVT-9811-18-B, EVT-9811-18-BD, EVT-9811-18-C, EVT-9811-18-CD, EVT-9811-18-D, EVT-9811-18-DD, EVT-9811-18-E, EVT-9811-18-ED

The PB RPD was out of range for the field replicate EVT-9811-22-B, site 22. The original value was 69, the duplicate sample EVT-9811-22-BD value was < 20, and the RPD *OUT* $|49| > 40$. The following results for the site 22, sample date 11/17/98, and using the first 0 characters of the sample number have been flagged with 'UJ4,FLDUP' or 'J4,FLDDUP': EVT-9811-22-A, EVT-9811-22-AD, EVT-9811-22-B, EVT-9811-22-BD, EVT-9811-22-C, EVT-9811-22-CD, EVT-9811-22-D, EVT-9811-22-DD, EVT-9811-22-E, EVT-9811-22-ED

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Database for Everett Housing Authority
November 1998 XRF Data

Sample Number	Lab Number		Arsenic	Lead
EVT-9811-01-A	98R-02779		18 U	96
EVT-9811-01-B	98R-02780		18 U	58
EVT-9811-01-C	98R-02781		18 U	57
EVT-9811-01-D	98R-02782		18 U	20 U
EVT-9811-01-E	98R-02783		18 U	20 U
EVT-9811-02-A	98R-02784		18 U	114
EVT-9811-02-B	98R-02785		18 U	54
EVT-9811-02-C	98R-02786		18 U	20 U
EVT-9811-02-D	98R-02787		18 U	20 U
EVT-9811-02-E	98R-02788		18 U	20 U
EVT-9811-03-A	98R-02789		18 U	67
EVT-9811-03-B	98R-02790		18 U	33
EVT-9811-03-C	98R-02791		18 U	20 U
EVT-9811-03-D	98R-02792		18 U	20 U
EVT-9811-03-E	98R-02793		18 U	20 U
EVT-9811-04-A	98R-02794		18 U	82 J4
EVT-9811-04-AD	98R-02799	Duplicate	18 U	101 J4
EVT-9811-04-B	98R-02795		18 U	90 J4
EVT-9811-04-BD	98R-02800	Duplicate	18 U	20 U,UJ4
EVT-9811-04-C	98R-02796		18 U	20 U,UJ4
EVT-9811-04-CD	98R-02801	Duplicate	18 U	20 U,UJ4
EVT-9811-04-D	98R-02797		18 U	20 U,UJ4
EVT-9811-04-DD	98R-02802	Duplicate	18 U	20 U,UJ4
EVT-9811-04-E	98R-02798		18 U	20 U,UJ4
EVT-9811-04-ED	98R-02803	Duplicate	18 U	20 U,UJ4
EVT-9811-05-A	98R-02804		18 U	44
EVT-9811-05-B	98R-02805		18 U	20 U
EVT-9811-05-C	98R-02806		18 U	20 U
EVT-9811-05-D	98R-02807		18 U	20 U
EVT-9811-05-E	98R-02808		18 U	22
EVT-9811-06-A	98R-02809		18 U	96 J4
EVT-9811-06-AD	98R-02814	Duplicate	18 U	53 J4
EVT-9811-06-B	98R-02810		18 U	20 U,UJ4
EVT-9811-06-BD	98R-02815	Duplicate	18 U	20 U,UJ4
EVT-9811-06-C	98R-02811		18 U	20 U,UJ4
EVT-9811-06-CD	98R-02816	Duplicate	18 U	20 U,UJ4
EVT-9811-06-D	98R-02812		18 U	20 J4
EVT-9811-06-DD	98R-02817	Duplicate	18 U	20 U,UJ4
EVT-9811-06-E	98R-02813		18 U	20 U,UJ4
EVT-9811-06-ED	98R-02818	Duplicate	18 U	20 U,UJ4
EVT-9811-07-A	98R-02819		18 U	74
EVT-9811-07-B	98R-02820		18 U	52

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Page 1

Database for Everett Housing Authority
November 1998 XRF Data

Sample Number	Lab Number		Arsenic	Lead
EVT-9811-14-E	98R-02863		18 U	20 U
EVT-9811-15-A	98R-02864		18 U	28
EVT-9811-15-AD	98R-02869	Duplicate	18 U	36
EVT-9811-15-B	98R-02865		18 U	20 U
EVT-9811-15-BD	98R-02870	Duplicate	18 U	22
EVT-9811-15-C	98R-02866		18 U	20 U
EVT-9811-15-CD	98R-02871	Duplicate	18 U	20 U
EVT-9811-15-D	98R-02867		18 U	20 U
EVT-9811-15-DD	98R-02872	Duplicate	18 U	20 U
EVT-9811-15-E	98R-02868		18 U	20 U
EVT-9811-15-ED	98R-02873	Duplicate	18 U	20 U
EVT-9811-16-A	98R-02874		18 U	39
EVT-9811-16-B	98R-02875		18 U	20 U
EVT-9811-16-C	98R-02876		18 U	20 U
EVT-9811-16-D	98R-02877		18 U	20 U
EVT-9811-16-E	98R-02878		18 U	20 U
EVT-9811-17-A	98R-02879		18 U	104
EVT-9811-17-B	98R-02880		18 U	21
EVT-9811-17-C	98R-02881		18 U	20 U
EVT-9811-17-D	98R-02882		18 U	20 U
EVT-9811-17-E	98R-02883		18 U	20 U
EVT-9811-18-A	98R-02884		18 U	20 U,UJ4
EVT-9811-18-AD	98R-02889	Duplicate	18 U	73 J4
EVT-9811-18-B	98R-02885		18 U	20 U,UJ4
EVT-9811-18-BD	98R-02890	Duplicate	18 U	20 U,UJ4
EVT-9811-18-C	98R-02886		18 U	20 U,UJ4
EVT-9811-18-CD	98R-02891	Duplicate	18 U	20 U,UJ4
EVT-9811-18-D	98R-02887		18 U	20 U,UJ4
EVT-9811-18-DD	98R-02892	Duplicate	18 U	20 U,UJ4
EVT-9811-18-E	98R-02888		18 U	20 U,UJ4
EVT-9811-18-ED	98R-02893	Duplicate	18 U	20 U,UJ4
EVT-9811-19-A	98R-02894		18 U	68
EVT-9811-19-B	98R-02895		18 U	20 U
EVT-9811-19-C	98R-02896		18 U	20 U
EVT-9811-19-D	98R-02897		18 U	20 U
EVT-9811-19-E	98R-02898		18 U	20 U
EVT-9811-20-A	98R-02899		18 U	88
EVT-9811-20-B	98R-02900		18 U	41
EVT-9811-20-C	98R-02901		18 U	33
EVT-9811-20-D	98R-02902		18 U	41
EVT-9811-20-E	98R-02903		18 U	20
EVT-9811-21-A	98R-02904		18 U	76

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Page 3

**Database for Everett Housing Authority
November 1998 XRF Data**

Sample Number	Lab Number	Arsenic	Lead
EVT-9811-27-D	98R-02947	18 U	20 U
EVT-9811-27-B	98R-02948	18 U	20 U
EVT-9811-28-A	98R-02949	18 U	198
EVT-9811-28-B	98R-02950	18 U	121
EVT-9811-28-C	98R-02951	18 U	32
EVT-9811-28-D	98R-02952	18 U	25
EVT-9811-28-E	98R-02953	18 U	20 U
EVT-9811-29-A	98R-02954	18 U	54
EVT-9811-29-B	98R-02955	18 U	29
EVT-9811-29-C	98R-02956	18 U	24
EVT-9811-29-D	98R-02957	18 U	20 U
EVT-9811-29-E	98R-02958	18 U	20 U
EVT-9811-30-A	98R-02959	18 U	89
EVT-9811-30-B	98R-02960	18 U	20 U
EVT-9811-30-C	98R-02961	18 U	20 U
EVT-9811-30-D	98R-02962	18 U	20 U
EVT-9811-30-E	98R-02963	18 U	20 U



Phase Two Environmental Site Assessment of Shallow Soils

Pine Village
2902 13th Street
Everett, Washington

prepared for:
Everett Housing Authority
Everett, Washington

September 2003
Project #40488.000-02

130 Nickerson Street
Suite 107
Seattle, WA 98109
206.233.9639 FAX
206.762.4780 FAX

ENGINEERING AND ENVIRONMENTAL

www.pbseav.com

2902 13th Street, Everett, Washington

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PBS Engineering and Environmental
40488.000-02

2902 13th Street, Everett, Washington

3.0 FIELD METHODS

On August 28, 2003, PBS completed the field sampling of soils on the subject property. The location of the soil sampling was determined with the assistance of Everett Housing Authority personnel (Figure 1). Each location was bored to a depth of 24 inches using a posthole digger. Each soil sample was taken as a composite between 6-inch intervals (0-6 inches, 6-12 inches, 12-18 inches, and 18-24 inches) starting from the bottom of each hole in order to eliminate sluff and possible cross-contamination from the upper intervals of the hole.

Each composite sample was placed into a 4-ounce sample jar and stored in a cooler with ice during field procedures until delivery to the project laboratory. All sampling equipment was decontaminated between each sampling interval using a detergent wash and distilled water rinse.

The samples were analyzed for arsenic in soils by Advanced Analytical Laboratory in Redmond, Washington.

Results of soil testing are discussed below, and are presented in Table 1.

4.0 FINDINGS

Eighteen (18) out of 24 soil samples analyzed by the laboratory contained detectable concentrations of arsenic at intervals ranging from 0-6 inches bgs to 18-24 inches bgs. The concentrations ranged from 2.1 mg/Kg to a maximum of 39 mg/Kg. The detected concentrations were below the Ecology cleanup level of 20 mg/Kg, with the one maximum concentration of 39 mg/Kg below the performance standard of 40 mg/Kg, based on a statistical evaluation developed in accordance with WAC 173-340-740, Compliance Monitoring in the MTCA Cleanup Regulation.

5.0 CONCLUSIONS

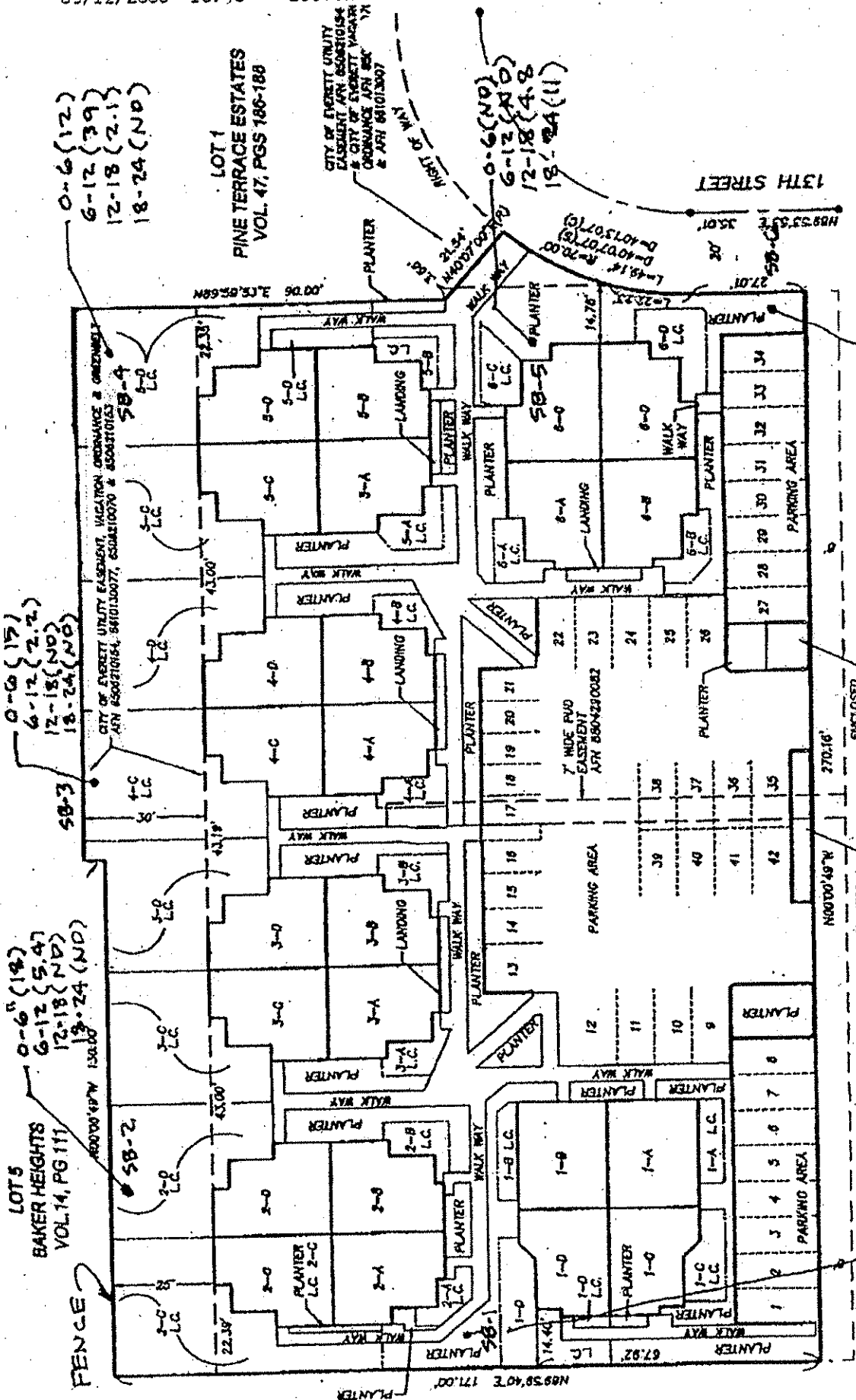
The shallow soils in the areas sampled were either non-detect or contained concentrations of arsenic below Ecology Method A Soil Cleanup Levels for Unrestricted (residential) Land Uses. The one sample that exceeded the cleanup level was within the performance standard, and therefore met the criteria for compliance monitoring. Based on these findings, no further investigation or remediation is recommended.

PBS Engineering and Environmental
40488.000-02

2902 13th Street, Everett, Washington

FIGURES

**PBS Engineering and Environmental
40488.000-02**



0-6 (12)
6-12 (39)
12-18 (2.1)
18-24 (ND)

0-6 (17)
6-12 (2.2)
12-18 (ND)
18-24 (ND)

0-6 (19)
6-12 (5.4)
12-18 (ND)
18-24 (ND)

0-6 (2.3)
6-12 (7.0)
12-18 (15)
18-24 (6.4)

FIG. 2 SITE PLAN

LEGEND

0-6 (2.3) ← ARSENIC CONCENTRATION (mg/kg) IN SOILS
 0-6 (16)
 6-12 (14)
 12-18 (6.6)
 18-24 (7.1)

SAMPLES INTERVAL
 (INCHES FROM GROUND) NO = NON-DETECT

2902 13th Street, Everett, Washington

**APPENDIX A
LABORATORY REPORTS AND SAMPLE CHAIN-OF-CUSTODY**

**PBS Engineering and Environmental
40488.000-02**

Advanced Analytical Laboratory
 (425) 497-0110, fax (425) 497-8089

AAL Job Number: A30828-7
 Client: PBS Environmental
 Project Manager: Harry Goren
 Client Project Name: Pine Village - Everett
 Client Project Number: 40488.000, Task 02
 Date received: 08/28/03

Analytical Results

Metals (7010), mg/kg		MTH BLK	SB1 18-24	SB2 0-6	SB2 6-12	SB2 12-18
Matrix	Soil	Soil	Soil	Soil	Soil	Soil
Date extracted	Reporting	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Date analyzed	Limits	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Arsenic (As)	2.0	nd	6.4	18	5.4	nd

Data Qualifiers and Analytical Comments

nd - not detected at listed reporting limits
 na - not analyzed
 J - estimated value
 Results reported on dry-weight basis
 Acceptable Recovery limits: 70% TO 130%
 Acceptable RPD limit: 30%

Advanced Analytical Laboratory
 (425) 497-0110, fax (425) 497-8089

AAL Job Number: A30828-7
 Client: PBS Environmental
 Project Manager: Harry Goren
 Client Project Name: Pine Village - Everett
 Client Project Number: 40488.000, Task 02
 Date received: 08/28/03

Analytical Results

Metals (7010), mg/kg		MTH BLK	SB3 12-18	SB3 18-24	SB4 0-6	SB4 8-12
Matrix	Soil	Soil	Soil	Soil	Soil	Soil
Date extracted	Reporting	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Date analyzed	Limits	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Arsenic (As)	2.0	nd	nd	nd	12	39

Data Qualifiers and Analytical Comments

nd - not detected at listed reporting limits

na - not analyzed

J - estimated value

Results reported on dry-weight basis

Acceptable Recovery limits: 70% TO 130%

Acceptable RPD limit: 30%

Advanced Analytical Laboratory
 (425) 497-0110, fax (425) 497-8089

AAL Job Number: A30828-7
 Client: PBS Environmental
 Project Manager: Harry Goren
 Client Project Name: Pine Village - Everett
 Client Project Number: 40488.000, Task 02
 Date received: 08/28/03

Analytical Results		Dupl				
Metals (7010), mg/kg		MTH BLK	SB5 12-18	SB5 18-24	SB5 18-24	SB6 0-6
Matrix	Soil	Soil	Soil	Soil	Soil	Soil
Date extracted	Reporting	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Date analyzed	Limits	08/29/03	08/29/03	08/29/03	08/29/03	08/29/03
Arsenic (As)	2.0	nd	4.8	11	12	16

Data Qualifiers and Analytical Comments
 nd - not detected at listed reporting limits
 na - not analyzed
 J - estimated value
 Results reported on dry-weight basis
 Acceptable Recovery limits: 70% TO 130%
 Acceptable RPD limit: 30%

Chain of Custody Record

Page 1 of 2

2821 152 Avenue NE
REDMOND, WA 98052
Phone: (425) 497-0110 Fax: (425) 497-8089
e-mail: seachemlab@yahoo.com

ADVANCED ANALYTICAL

Client: PBS Environmental

Project Manager: Harry Doren

Address: 130 Nickerson Seattle

Project Name: Pine Village - Everett

Project Number: P0488.000 Task 02

Collector: Harry Doren

Phone: 206 253 9639 Fax: 762-4780

Date of collection: 8/28/03

Sample ID	Time	Matrix	Container Type	B20 Vials	BTEX	BTEX-MTHPX	MTHPX	MTHPX-DIC	B270 PAH	PCB B02	PCB B01	PCB B02	Lead	Notes, comments	# of containers
1 SB-1-0-6	1315	S	Asl												
2 SB-1-6-12															
3 SB-1-12-18															
4 SB-1-18-24															
5 SB-2-0-6	1345														
6 SB-2-6-12															
7 SB-2-12-18															
8 SB-2-18-24															
9 SB-3-0-6	1410														
10 SB-3-6-12															
11 SB-3-12-18															
12 SB-3-18-24															
13 SB-4-0-6	1415														
14 SB-4-6-12															
15 SB-4-12-18															

Sample receipt info:

Total # of containers: _____

Condition (temp. °C) _____

Seals (Intact?, Y/N) _____

Comments: _____

Turnaround time: Same day 24 hr 48 hr Standard

Relinquished by:	Date/Time	Received by:	Date/Time
Harry Doren		Raymond	8/28/03 16:30
Relinquished by:	Date/Time	Received by:	Date/Time

EXHIBIT I
LETTER FROM ECOLOGY TO CITY OF EVERETT



STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

P.O. Box 47600 • Olympia, Washington 98504-7600
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

May 18, 2004

Mr. Larry Crawford
Assistant Mayor
City of Everett
2930 Wetmore
Everett, WA 98201

**Re: City of Everett role in supporting the Everett Housing Authority's
purchase and cleanup of properties at the Everett Smelter Site**

Dear Mr. Crawford:

The City of Everett (City) has asked the Department of Ecology (Ecology) to address a number of concerns related to the City's expected role in supporting the Everett Housing Authority's (EHA's) purchase and cleanup of properties at the Everett Smelter Site. This letter is intended to address those concerns.

As the City is aware, EHA is currently negotiating a purchase agreement with Asarco, Inc. (Asarco) to purchase properties at two separate portions of the Everett Smelter Site - the "Fenced Area" and the "Asarco Houses" area. EHA has approached Ecology prior to purchasing these properties, in order to settle in advance the liability under the Model Toxics Control Act (MTCA), Chapter 70.105D RCW, which EHA would otherwise acquire upon purchase. Ecology and EHA have negotiated two separate Prospective Purchaser Consent Decrees (PPCDs or decrees) in order to settle in advance EHA's liability. Both PPCDs are currently undergoing public comment. Assuming there will be no need to substantively revise the decrees as a result of either the public comment period ending on May 21 or any continued negotiations with EHA, it is expected these decrees can be signed and entered in Snohomish County Superior Court by June 1, 2004.

Under the terms of the PPCDs, EHA is assuming responsibility for cleanup of the Asarco Houses area of the Site, and also for completing cleanup of the Fenced Area portion of the Site following Asarco's removal of soils with arsenic concentrations in excess of 3000 parts per million, in accordance with the Integrated Final Cleanup Action Plan (1999), as amended (2002) (FCAP), Interim Action Report and Final Design Report. EHA's cleanup of the Fenced Area and Asarco Houses area will enable residential development to occur at these portions of the Site.

Ecology understands the City's role in supporting EHA's property purchases, subsequent remedial work and redevelopment to be as follows:

- (1) In accordance with the terms of agreement approved by the City Council on May 12, 2004 and attached to this letter, the City will act as guarantor of a Line of Credit Loan that will be provided to EHA by a financial institution;

**EVERETT SMELTER SITE
EHA/CITY OF EVERETT DEAL POINTS**

- 1) Land Use. The City of Everett will at EHA's expense process as expeditiously as possible but within existing procedures and limitations, including consistency with the Integrated Cleanup Plan (FCAP/FEIS as amended), Final Design Report for the Everett Smelter Site, and land use codes, any land use, demolition, or construction permit, application or request (prepared by and at expense of EHA) including but not limited to:
 - a) Rezoning the existing R-2 zone (Fenced and Adjacent Area) to R-1A.
 - b) Subdivision and associated vacation of public rights-of-way (at no cost to EHA), including a new street at the northern portion of the site with a new controlled intersection with East Marine View Drive (at no cost to the City).
 - c) Demolition, public works, industrial waste discharge, and other required permits for remediation work, structures, roadways, utilities, and redevelopment activities.
 - d) Any supplemental environmental review required for the above actions.

- 2) Terms of Loan Guarantee. The City of Everett will guarantee EHA's Line of Credit loan in an amount not exceeding approximately \$5,700,000, and in a form mutually acceptable to the parties and the City of Everett and EHA's lender. The City of Everett and EHA will enter into an agreement under which:
 - a) Prior to drawing on the Line of Credit, EHA shall review the project budget with the City of Everett and then adopt a project budget and a contingency funding plan for project costs in excess of the approved budget.
 - b) The City of Everett may require its approval prior to any draw by EHA on the Line of Credit.
 - c) If the project costs at any time exceed 12 % of the original approved budget (prior to change orders), the City reserves the right to suspend cover any of the Line of Credit yet to be drawn down until the budget issue is resolved.
 - d) Fifty percent of any funds remaining from the proceeds of the sale of these properties by EHA after the payment of the Line of Credit will be paid by EHA to the City of Everett in consideration of the unreimbursed project support and risk borne by the City of Everett.
 - e) Require Asarco to accept all cleanup costs.

- 3) Review Process. The City of Everett and EHA will establish a review process for monitoring project implementation which will include, at a minimum, EHA providing to the City of Everett:
 - a) The ability to review, prior to execution, all contracts and agreements to be entered into by EHA for this project, including but not limited to purchase and sales agreements, construction and remediation contracts, and financing documents.
 - b) A weekly status report by the EHA project construction manager.
 - c) An updated budget whenever there is a cumulative budget or change orders of \$20,000 or greater.

- h) The City of Everett may direct the timing of the sale of the remediated parcels by EHA.
- i) EHA shall indemnify and hold the City of Everett harmless from any liability associated with this project.

This document outlines generally terms the City of Everett and the Everett Housing Authority have discussed with respect to this project and the parties are in general agreement as to these deal points subject to the execution of a final agreement between the parties.

FILED

SEP 30 2004

PAMI L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH

**STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT**

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

HOUSING AUTHORITY OF THE
CITY OF EVERETT,

Defendant.

NO.

04 2 12170 0

JOINT MOTION FOR ENTRY OF
CONSENT DECREE

I. INTRODUCTION

Plaintiff, State of Washington, Department of Ecology ("Ecology"), and Defendant, the Housing Authority of the City of Everett ("Everett Housing Authority" or "EHA") bring this motion seeking entry of the attached Consent Decree ("Decree"). This motion is based upon the pleadings filed in this matter, including the Declarations of Tim Nord and Kristie E. Carevich, attached.

II. RELIEF REQUESTED

The Parties request that the Court approve and enter the attached Consent Decree, which requires certain remedial actions to occur at 22 vacant residential-zoned tracts of real property (Asarco Property) and streets and other public rights of way (Public Property), collectively referred to as the "Fenced Area." The Fenced Area comprises one portion of the upland area of

1 the Everett Smelter Site, which is generally located in northeast Everett, Washington. The
2 Parties also request that the Court retain jurisdiction over this action until the work required by
3 the Consent Decree is completed and the Parties request a dismissal of this action.

4 III. FACTS

5 The Decree between EHA and Ecology resolves in advance the potential liability EHA
6 would otherwise acquire upon purchase of 22 vacant residential-zoned tracts of real property
7 (Asarco Property) and upon vacation of streets and other public rights of way (Public Property),
8 , collectively referred to as the "Fenced Area," that comprise a portion of the Everett Smelter
9 Site, for the known and suspected contamination at the Everett Smelter Site ("Site") arising
10 from a release or threatened release of hazardous substances.

11 The Decree will result in substantial new resources to facilitate cleanup, will promote
12 the public interest by expediting cleanup activities at the Site consistent with RCW
13 70.105D.030(2)(e) and Chapter 173-340 WAC, and will facilitate the redevelopment and reuse
14 of a portion of the Site for single family or other residential and/or related uses without
15 contributing to the existing release or threatened release, interfering with remedial actions that
16 may be needed at the Site, or increasing health risks to persons at or in the vicinity of the Site.
17 See Nord. Decl., ¶ 7; Carevich Decl., ¶ 7.

18 II. AUTHORITY

19 Authority is conferred upon the Washington State Attorney General by RCW
20 70.105D.040(5)(a) to agree to a settlement with any person not currently liable for remedial
21 action at a facility, who intends to purchase, redevelop or reuse a site if, after public notice and
22 any required hearing, Ecology finds the proposed settlement would lead to a more expeditious
23 cleanup of hazardous substances in compliance with cleanup standards under RCW
24 70.105D.030(2)(e). In addition, Ecology must also find that the proposed redevelopment or
25 reuse is not likely to contribute to the existing releases or threatened releases or interfere with
26 remedial actions that may be needed on the Site or increase health risks to persons at or in the

1 vicinity of the Site. Lastly, the Attorney General must find that the settlement will yield
2 substantial new resources to facilitate the cleanup and expedite remedial action consistent with
3 the rules adopted under RCW 70.105D. Under RCW 70.105D.040(4)(b), such a settlement
4 must be entered as a Consent Decree issued by a court of competent jurisdiction.

5 Ecology believes it is appropriate for the Court to exercise its judicial discretion and
6 approve the attached Decree.

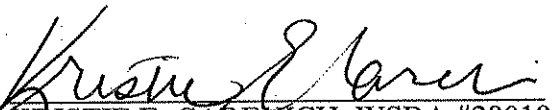
7 **III. CONCLUSION**


8 The parties request that the Court approve and enter the attached Decree in full
9 resolution of the matters involved in this action.

10 DATED this 24th day of September, 2004.

11
12 CHRISTINE O. GREGOIRE
13 Attorney General

HOUSING AUTHORITY OF THE CITY
OF EVERETT

14 
15 KRISTIE E. CAREVICH, WSBA #28018
16 Assistant Attorney General
17 Attorneys for Plaintiff
18 Department of Ecology
19 (360) 586-6762

20 
21 CHARLES R. WOLFE, WSBA #14585
22 Attorney for Defendant Housing Authority
23 of the City of Everett
24 (206) 447-2901

FILED

SEP 30 2004

WILLIAM DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH

**STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT**

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

HOUSING AUTHORITY OF THE
CITY OF EVERETT,

Defendant.

NO. **04 2 12170 0**

DECLARATION OF KRISTIE E.
CAREVICH

I, KRISTIE E. CAREVICH, declare as follows:

1. I am over eighteen years of age and am competent to testify herein. The facts set forth in this Affidavit are from my personal knowledge.

2. I am an Assistant Attorney General assigned to represent the Washington State Department of Ecology and the Attorney General's Office on legal matters relating to the Everett Smelter Site, generally located in Everett, Washington.

3. On behalf of Ecology and the Attorney General's Office, I took part in the negotiations which led to the Consent Decree ("Decree") that is being presented to the Court.

4. The Consent Decree was the subject of public notice and public comment as required by RCW 70.105D.040(4)(a). Public hearings were held on April 27, 2004 and July 7, 2004, in Everett, Washington.

1 5. Ecology received comments during the public comment period, which Ecology has
2 reviewed and considered.

3 6. Ecology has determined that no additional public comment under WAC 173-340-
4 600 is required.

5 7. Ecology has determined that the proposed settlement will yield substantial new
6 resources to facilitate cleanup, will lead to a more expeditious cleanup of hazardous substances
7 in compliance with cleanup standards under RCW 70.105D.030(2)(e) and Chapter 173-340
8 WAC, and that based upon available information, the proposed redevelopment or reuse is not
9 likely to contribute to the existing releases or threatened releases, interfere with remedial
10 actions that may be needed on the Site, or increase health risks to persons at or in the vicinity of
11 the Site.

12 I declare under penalty of perjury of the laws of the state of Washington that the following
13 is true and correct.

14 DATED this 24th day of September, 2004.

15 
16 KRISTIE E. CAREVICH
17
18
19
20
21
22
23
24
25
26

FILED

SEP 30 2004

W. L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH

STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

HOUSING AUTHORITY OF THE
CITY OF EVERETT,

Defendant.

NO. **04 2 12170 0**

DECLARATION OF TIM NORD

I, TIM NORD, declare as follows:

1. I am over twenty-one years of age and am competent to testify herein. The facts set forth in this declaration are from my personal knowledge.

2. I am employed as a Section Manager at the Washington State Department of Ecology, Headquarters, Toxics Cleanup Program. I am the designated management lead and am knowledgeable on matters relating to the Everett Smelter Site, which is generally located in northeast Everett, Washington.

3. On behalf of Ecology and the Attorney General's Office, I took part in the negotiations which led to the Prospective Purchaser Consent Decree that is being presented to the Court.

1 4. The Consent Decree was the subject of public notice and comment as required
2 by RCW 70.105D.040(4)(a). Public hearings were held on April 27, 2004 and July 7, 2004 in
3 Everett, Washington.

4
5 5. Ecology received comments during the public comment periods, which Ecology
6 has reviewed and considered.

7 6. Ecology has determined that no additional public comment period under WAC
8 173-340-600 is required.

9
10 7. Ecology has determined that the proposed settlement will yield substantial new
11 resources to facilitate cleanup, will lead to a more expeditious cleanup of hazardous substances
12 in compliance with cleanup standards under RCW 70.105D.030(2)(e) and Chapter 173-340
13 WAC, and that based upon available information, the proposed redevelopment or reuse is not
14 likely to contribute to the existing releases or threatened releases, interfere with remedial
15 actions that may be needed on the Site, or increase health risks to persons at or in the vicinity of
16 the Site.

17
18 I declare under penalty of perjury of the laws of the State of Washington that the
19 foregoing is true and correct.

20
21 RESPECTFULLY SUBMITTED this 27 day of September, 2004.

22
23 
24
25
26
TIM NORD

FILED

SEP 30 2004

PAUL L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH

STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

HOUSING AUTHORITY OF THE CITY
OF EVERETT,

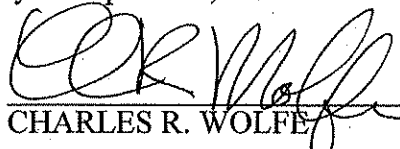
Defendant.

NO. **04 2 12170 0**

ACCEPTANCE OF SERVICE

I, Charles R. Wolfe, hereby acknowledge receipt of the Case Cover Sheet, Summons, Complaint, Declaration of Kristie E. Carevich, Declaration of Tim Nord, Joint Motion for Entry of Consent Decree, Order Entering Consent Decree, Prospective Purchaser Consent Decree, A19-1A Invoice Voucher and Certificate of Service above-entitled matter on this 27th day of September, 2004, and hereby accept the service of the same by mail.

Signed at Seattle, Washington this 27th day of September, 2004.


CHARLES R. WOLFE

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FILED

SEP 30 2004

DAVID L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH

**STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

HOUSING AUTHORITY OF THE
CITY OF EVERETT,

Defendant.


NO. **04 2 12170 0**

CERTIFICATE OF SERVICE

I certify that on the 24th day of September, 2004, I caused to be served by first-class mail, Summons, Complaint, Declaration of Kristie E. Carevich, Declaration of Tim Nord, Joint Motion for Entry of Consent Decree, Order Entering Consent Decree, Prospective Purchaser Consent Decree and Certificate of Service, in the above-captioned matter, upon the parties herein, as indicated below:

Charles R. Wolfe
Foster Pepper & Shefelman PLLC
1111 3rd Avenue Suite 3400
Seattle, WA 98101-3299

DATED this 24th day of September, 2004, in Olympia, Washington.


SALLY JOHNSON, Legal Assistant

FILED

SEP 30 2004

PAUL L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH

04 2 12170 0

SNOHOMISH COUNTY SUPERIOR COURT
CASE INFORMATION COVER SHEET

Case Number _____ Case Title State of Washington Department of Ecology v. Housing Authority of the City of Everett

Attorney Name Kristie E. Carevich Bar Membership Number 28018

Please check one category that best describes this case for indexing purposes. Accurate case indexing not only saves time in docketing new cases, but helps in forecasting needed judicial resources. Cause of action definitions are listed on the back of this form. Thank you for your cooperation.

APPEAL/REVIEW

- Administrative Law Review (ALR 2)
- Appeal of a Department of Licensing Revocation (DOL 2)
- Civil, Non-Traffic (LCA 2)
- Civil, Traffic (LCI 2)

CONTRACT/COMMERCIAL

- Breach of Contract (COM 2)
- Commercial Contract (COM 2)
- Commercial Non-Contract (COL 2)
- Third Party Collection (COL 2)

MERETRICIOUS RELATIONSHIP

- Meretricious Relationship (MER 2)

DOMESTIC VIOLENCE/ANTIHARASSMENT

- Civil Harassment (HAR 2)
- Domestic Violence (DVP 2)
- Foreign Protection Order (FPO 2)
- Vulnerable Adult Protection (VAP 2)

JUDGMENT

- Abstract Only (ABJ 2)
- Foreign Judgment (FJU 2)
- Judgment, Another County (ABJ 2)
- Judgment, Another State (FJU 2)
- Tax Warrant (TAX 2)
- Transcript of Judgment (TRJ 2)

OTHER COMPLAINT/PETITION

- Action to Compel/Confirm Private Binding Arbitration (MSC 2)
- Change of Name (CHN 2)
- Deposit of Surplus Funds (MSC 2)
- Emancipation of Minor (EOM 2)
- Injunction (INJ 2)
- Interpleader (MSC 2)
- Malicious Harassment (MHA 2)
- Minor Settlement (No guardianship) (MST 2)

- Petition for Civil Commitment (Sexual Predator)(PCC 2)
- Seizure of Property from Commission of Crime (SPC 2)
- Seizure of Property Resulting from a Crime (SPR 2)
- Subpoenas (MSC 2)

PROPERTY RIGHTS

- Condemnation (CON 2)
- Foreclosure (FOR 2)
- Land Use Petition (LUP 2)
- Property Fairness (PFA 2)
- Quiet Title (QTI 2)
- Unlawful Detainer (UND 2)

TORT, MEDICAL MALPRACTICE

- Hospital (MED 2)
- Medical Doctor (MED 2)
- Other Health Care Professional (MED 2)

TORT, MOTOR VEHICLE

- Death (TMV 2)
- Non-Death Injuries (TMV 2)
- Property Damage Only (TMV 2)

TORT, NON-MOTOR VEHICLE

- Asbestos (PIN 2)
- Other Malpractice (MAL 2)
- Personal Injury (PIN 2)
- Products Liability (TTO 2)
- Property Damage (PRP 2)
- Wrongful Death (WDE 2)

WRIT

- Habeas Corpus (WHC 2)
- Mandamus (WRM 2)
- Restitution (WRR 2)
- Review (WRV 2)

RECEIVED

OCT 04 2004

DEPT OF ECOLOGY

IF YOU CANNOT DETERMINE THE APPROPRIATE CATEGORY, PLEASE DESCRIBE THE CAUSE OF ACTION BELOW.

Consent Decree

APPEAL/REVIEW

Administrative Law Review-Petition to the superior court for review of rulings made by state administrative agencies.

Appeal of a Department of Licensing Revocation-Appeal of a DOL revocation (RCW 46.20.308(9)).

Lower Court Appeal-Civil-An appeal for a civil case; excludes traffic infraction and criminal matters.

Lower Court Appeal-Infractions-An appeal for a traffic infraction matter.

CONTRACT/COMMERCIAL

Breach of Contract-Complaint involving monetary dispute where a breach of contract is involved.

Commercial Contract-Complaint involving monetary dispute where a contract is involved.

Commercial Non-Contract-Complaint involving monetary dispute where no contract is involved.

Third Party Collection-Complaint involving a third party over a monetary dispute where no contract is involved.

MERETRICIOUS RELATIONSHIP

Meretricious Relationship-Petition for distribution of property from a meretricious relationship (i.e., a stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist).

DOMESTIC

VIOLENCE/ANTIHARASSMENT

Civil Harassment-Petition for protection from civil harassment.

Domestic Violence-Petition for protection from domestic violence.

Foreign Protection Orders-Any protection order of a court of the United States, or of any state or territory, which is entitled to full faith and credit in this state.

Vulnerable Adult Protection-Petition for protection order for vulnerable adults, as those persons are defined in RCW 74.34.020.

JUDGMENT

Abstract Only-A certified copy of a judgment docket from another superior court, an appellate court, or a federal district court.

Foreign Judgment-Any judgment, decree, or order of a court of the United States, or of any state or territory, which is entitled to full faith and credit in this state.

Judgment, Another County-A certified copy of a judgment docket from another superior court within the state.

Judgment, Another State-Any judgment, decree, or order from another state which is entitled to full faith and credit in this state.

Tax Warrant-A notice of assessment by a state agency creating a judgment/lien in the county in which it is filed.

Transcript of Judgment-A certified copy of a judgment from a court of limited jurisdiction to a superior court in the same county.

OTHER COMPLAINT/PETITION

Action to Compel/Confirm Private Binding Arbitration-Petition to compel or confirm private binding arbitration.

Change of Name-Petition for a change of name. If change is confidential due to domestic violence/antiharassment see case type 5 instead.

Deposit of Surplus Funds-Deposit of money or other item with the court.

Emancipation of Minor-Petition by a minor for a declaration of emancipation.

Injunction-Complaint/petition to require a person to do or refrain from doing a particular thing.

Interpleader-Petition for the deposit of disputed earnest money from real estate, insurance proceeds, and/or other transaction(s).

Malicious Harassment-Suit involving damages resulting from malicious harassment.

Minor Settlements-Petition for a court decision that an award to a minor is appropriate when no letters of guardianship are required (e.g., net settlement value \$25,000 or less).

Petition for Civil Commitment (Sexual Predator)-Petition for the involuntary civil commitment of a person who 1) has been convicted of a sexually violent offense whose term of confinement is about to expire or has expired, 2) has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial who is about to be released or has been released, or 3) has been found not guilty by reason of insanity of a sexually violent offense and who is about to be released or has been released, and it appears that the person may be a sexually violent predator.

Seizure of Property from the Commission of a Crime-Seizure of personal property which was employed in aiding, abetting, or in the commission of a crime, from a defendant following criminal conviction.

Seizure of Property Resulting from a Crime-Seizure of tangible or intangible property which is the direct or indirect result of a crime, from a defendant following criminal conviction (e.g., remuneration for, or contract interest in, a depiction or account of a crime).

Subpoenas-Petition for a subpoena.

PROPERTY RIGHTS

Condemnation-Complaint involving governmental taking of private property with payment, but not necessarily with consent.

Foreclosure-Complaint involving termination of ownership rights when a mortgage or tax foreclosure is involved, where ownership is not in question.

Land Use Petition-Petition for an expedited judicial review of a land use decision made by a local jurisdiction (RCW 36.70C.040).

Property Fairness-Complaint involving the regulation of private property or restraint of land use by a government entity brought forth by Title 64 RCW.

Quiet Title-Complaint involving the ownership, use, or disposition of land or real estate other than foreclosure.

Unlawful Detainer-Complaint involving the unjustifiable retention of lands or attachments to land, including water and mineral rights.

TORT, MEDICAL MALPRACTICE

Hospital-Complaint involving injury or death resulting from a hospital.

Medical Doctor-Complaint involving injury or death resulting from a medical doctor.

Other Health Care Professional-Complaint involving injury or death resulting from a health care professional other than a medical doctor.

TORT, MOTOR VEHICLE

Death-Complaint involving death resulting from an incident involving a motor vehicle.

Non-Death Injuries-Complaint involving non-death injuries resulting from an incident involving a motor vehicle.

Property Damage Only-Complaint involving only property damages resulting from an incident involving a motor vehicle.

TORT, NON-MOTOR VEHICLE

Asbestos-Complaint alleging injury resulting from asbestos exposure.

Other Malpractice-Complaint involving injury resulting from other than professional medical treatment.

Personal Injury-Complaint involving physical injury not resulting from professional medical treatment, and where a motor vehicle is not involved.

Products Liability-Complaint involving injury resulting from a commercial product.

Property Damages-Complaint involving damage to real or personal property excluding motor vehicles.

Wrongful Death-Complaint involving death resulting from other than professional medical treatment.

WRIT

Writ of Habeas Corpus-Petition for a writ to bring a party before the court.

Writ of Mandamus-Petition for a writ commanding the performance of a particular act or duty.

Writ of Restitution-Petition for a writ restoring property or proceeds; not an unlawful detainer petition.

Writ of Review-Petition for review of the record or decision of a case pending in the lower court; does not include lower court appeals or administrative law reviews.

CASE TYPES 3 - 6

COUNTY SUPERIOR COURT

CASE INFORMATION COVER SHEET

Case Number _____ Case Title _____
Attorney Name _____ Bar Membership Number _____

Please check one category that best describes this case for indexing purposes. Accurate case indexing not only saves time in docketing new cases, but helps in forecasting needed judicial resources. Cause of action definitions are listed on the back of this form. Thank you for your cooperation.

DOMESTIC RELATIONS

- Annulment/Invalidity (INV 3)
- Child Custody (CUS 3)
- Dissolution with Children (DIC 3)
- Dissolution with no Children (DIN 3)
- Foreign Judgment (FJU 3)
- Legal Separation (SEP 3)
- Mandatory Wage Assignment (MWA 3)
- Modification (MOD 3)
- Modification: Support Only (MDS 3)
- Out-of-State Custody (OSC 3)
- Parenting Plan/Child Support (PPS 3)
- Reciprocal, Respondent in County (RIC 3)
- Reciprocal, Respondent Out of County (ROC 3)

DOMESTIC VIOLENCE/ANTIHARASSMENT

- Confidential Name Change (CHN 5)

MENTAL ILLNESS

- Alcohol/Drug Treatment (ALT 6)
- Mental Illness—Adult (MI 6)
- Mental Illness—Juvenile (MIJ 6)

ADOPTION/PATERNITY

- Adoption (ADP 5)
- Confidential Intermediary (MSC 5)
- Initial Pre-Placement Report (PPR 5)
- Modification (MOD 5)
- Paternity (PAT 5)
- Paternity/URES/UIFS (PUR 5)
- Relinquishment (REL 5)
- (Title 26) Termination of Parent-Child Relationship (TER 5)

PROBATE/GUARDIANSHIP

- Absentee (ABS 4)
- Disclaimer (DSC 4)
- Estate (EST 4)
- Foreign Will (FNW 4)
- Guardianship (GDN 4)
- Guardianship/Estate (G/E 4)
- Limited Guardianship (LGD 4)
- Minor Settlement (With guardianship) (MST 4)
- Non-Probate Notice to Creditors (NNC 4)
- Will Only (WLL 4)

If you cannot determine the appropriate category, please describe the cause of action below.

DOMESTIC RELATIONS

Annulment--Invalidity--Petition claiming an illegal or invalid marriage.

Child Custody--Petition involving the immediate charge and control of a child.

Dissolution with Children--Petition to terminate a marriage other than annulment, with children of that marriage.

Dissolution with no Children--Petition to terminate a marriage other than annulment, with no children of that marriage.

Foreign Judgment--A judgment, decree, or order of a court of the United States, or any state or territory, which is entitled to full faith and credit in this state.

Legal Separation--Petition to live separate and apart.

Mandatory Wage Assignment--Petition for wage assignment.

Modification--Petition seeking amendment of a previous order or decree.

Modification: Support Only--Petition seeking amendment of a previous order or decree regarding support.

Out-of-State Custody--Recording custody established out-of-state.

Parenting Plan/Child Support--Petition for Residential Schedule/Parenting Plan/Child Support in circumstances set forth in RCW 26.26.375.

Reciprocal, Respondent-in-County--Petition to enforce orders between states under URESA for respondents in the county.

Reciprocal, Respondent-Out-of-County--Petition to enforce orders between states under URESA for respondents out of the county.

DOMESTIC VIOLENCE/ ANTI-HARASSMENT

Confidential Name Change--Petition for name change, when domestic violence/anti-harassment issues require confidentiality.

MENTAL ILLNESS

Alcohol/Drug Treatment--Petition for involuntary treatment for one who is incapacitated by alcohol or drugs.

Mental Illness--Adult--Petition for involuntary treatment for an adult who is incapacitated by mental illness.

Mental Illness--Juvenile--Petition for involuntary treatment for a juvenile who is incapacitated by mental illness.

ADOPTION/PATERNITY

Adoption--Petition to establish a new, permanent relationship of parent and child not having that relationship.

Confidential Intermediary--Petition to appoint a confidential intermediary to contact the adopted person(s), birth parent(s), or other relative(s).

Initial Pre-Placement--An initial pre-placement report filed on a child by the DSHS prior to the filing of adoption papers.

Modification--Petition seeking amendment of a previous order or decree.

Paternity--Petition to determine the legal status of an alleged biological father.

Paternity/URESА/UIFSA--Petition to determine the legal status of an alleged biological father which is filed in conjunction with the reciprocal report entered under the URESA or UIFSA acts.

Relinquishment--Petition to relinquish a child to DSHS, an agency, or a prospective adoptive parent.

(Title 26) Termination of Parent-Child Relationship--Petition to terminate a parent-child relationship when parent has not executed a written consent.

PROBATE/GUARDIANSHIP

Absentee--Petition to determine the location of absent owner of real or personal property.

Disclaimer--Recording a written instrument disclaiming an interest by beneficiaries.

Estate--Petition seeking court settlement of a deceased person's property.

Foreign Will--Filing of a will for probate that has been proved in another state, territory, or foreign country.

Guardianship--Petition to appoint a guardian to manage the affairs of an incompetent or non-resident person.

Guardianship/Estate--Petition seeking court settlement for the property of a deceased person who was the ward of a guardian.

Limited Guardianship--Petition to appoint a limited guardian with only partial responsibility for the ward's person and/or property, where the ward is not fully incompetent.

Minor Settlements--Petition for a court decision that an award to a minor is appropriate when letters of guardianship are required (e.g., net settlement value is greater than \$25,000).

Non-Probate Notice to Creditors--The filing of a non-probate notice to creditors in a case in which no probate action is expected (e.g., an estate with a living trust which does not require probate, providing the heirs with an opportunity to start the time period for creditor filing of claims).

Will Only--Filing a will when no further action shall be taken.