



# Toxics Cleanup Program

## Procedure 440C: Releasing Environmental Covenants under the Model Toxics Control Act

- Established:* September 16, 2015
- Revised:* December 22, 2016 (formatting revisions and new Attachment lettering only)
- Contact:* Policy & Technical Support Unit, Headquarters
- Purpose:* This is one in a group of procedures related to establishing, amending, and removing Environmental Covenants that can be found on Ecology's Toxics Cleanup Program's policies and procedures webpage at:  
<http://www.ecy.wa.gov/programs/tcp/policies/tcppoly.html>
- References:* [WAC 173-340-440](#)  
[Chapter 70.105D RCW](#), Hazardous Waste Cleanup-Model Toxics Control Act  
[Chapter 64.70 RCW](#), Uniform Environmental Covenants Act  
[Voluntary Cleanup Program \(VCP\) User Manual](#) (on SharePoint)
- Attachments:* A – Proposed Release of Covenant Notification Letter  
B – Termination and Release of Covenant Template and Instructions
- Disclaimer:* This Procedure is intended solely for the guidance of Ecology staff. It is not intended, and cannot be relied on, to create rights, substantive or procedural, enforceable by any party in litigation with the state of Washington. Ecology may act at variance with this Procedure depending on site-specific circumstances, or modify or withdraw this Procedure at any time.

*Approved by:*

James J. Pendowski, Program Manager  
Toxics Cleanup Program

**Accommodation Requests:** To request ADA accommodation, including materials in a format for the visually impaired, call Ecology's Toxics Cleanup Program at 360-407-7170. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341

## Contents

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Background and Applicability .....	3
Procedure for Releasing an Environmental Covenant .....	4
Public Involvement Checklist for Release of Environmental Covenants at Both VCP & Formal Process Sites.....	10
<b>Attachment A:</b> Proposed Release of Covenant Notification Letter .....	A-2
<b>Attachment B:</b> Termination and Release of Covenant Template and Instructions .....	B-2
TERMINATION AND RELEASE OF ENVIRONMENTAL COVENANT .....	B-3
CONSENT TO TERMINATION AND RELEASE OF COVENANT .....	B-4

## **Background and Applicability**

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WAC 173-340-440 of the Model Toxics Control Act (MTCA) regulation requires that restrictions be placed on the future use and activities at certain cleanup sites where residual contamination remains after completion of a cleanup. The legal mechanism that is typically used for these restrictions is an “environmental covenant,” which is placed on the property title or deed.

An environmental covenant can be thought of as this: a restriction or obligation attached to a property that entitles somebody other than the owner (in this case, Ecology and other specified persons) certain specific legal rights to ensure that the cleanup protects future users of the property, the environment, and the integrity of the remedial actions at the site.

The Uniform Environmental Covenants Act (UECA), Chapter 64.70 RCW, was passed by the Washington State Legislature in 2007. The law establishes the process and procedures that must be followed for restrictions on future uses or activities at cleanup sites, so that the restrictions will be valid and enforceable over the long term.

Both MTCA and UECA contain requirements related to the release of environmental covenants. This procedure consolidates those requirements.

Note that this procedure refers to parties as though they were separate entities, including the potentially liable person (PLP), the landowner, and owners of other property interests and encumbrances who may need to sign the Release.<sup>1</sup> This may not be the situation at a particular site. For simplicity in this procedure, the landowner and owners of other interests and encumbrances are referred to collectively as the “property owner(s).”

While the exact sequence of steps, as well as who conducts the work (Ecology, potentially liable person (PLP) or Voluntary Cleanup Program (VCP) customer), may vary from site to site, all of the elements identified here must be addressed. The Cleanup Project Manager can adjust approaches as necessary to reflect the site-specific situation.

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<sup>1</sup> An example of other property interests is an easement or right-of-way that is impacted by the restrictions. Examples of encumbrances are mortgages and liens. Persons holding these instruments may have signed the Covenant as a “grantor” or signed a subordination agreement (meaning that the restrictions in Ecology’s Covenant take precedence over their interest, i.e. they “subordinate” their interest). See the Environmental Covenant template (Publication No. 15-09-054) for further discussion of this topic.

## **Procedure for Releasing an Environmental Covenant <sup>2</sup>**

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<b>PLP / VCP Customer <sup>3</sup></b> <b>or</b> <b>Property Owner</b>	1. Requests the Environmental Covenant (“Covenant”) be released.
<b>Cleanup Project Manager</b>	2. Reviews conditions at site to determine if conditions have been met for release of Covenant under WAC 173-340-440(12). Consults with supervisor and AGO as necessary.  3. If it is determined the conditions for release of the Covenant have been met, sends PLP / VCP Customer or Property Owner “Termination and Release of Environmental Covenant” (“Release”) template. ( <b>Attachment 2</b> )
<b>PLP / VCP Customer</b> <b>or</b> <b>Property Owner</b>	4. Using Ecology’s template, prepares Release. 5. Conducts updated title search to identify persons currently holding a recorded interest in the property. 6. Compiles addresses for everyone who is required to be sent a public notice under Step 9. 7. Sends draft Release to Ecology, along with mailing addresses.

<sup>2</sup> Environmental Covenants established prior to the passage of UECA in 2007 may be referred to as “deed restrictions” or “restrictive covenants.” Also, UECA uses the term “termination”; the MTCA rule uses the term “removal.” For simplicity, the term “release” has been used here.

<sup>3</sup> The VCP Customer requesting the Release may be different from the original VCP Customer who cleaned up the site. For example, a person may have purchased and redeveloped the property and removed the remaining contamination during the redevelopment under the VCP.

<p><b>Cleanup Project Manager</b></p> <p><i>NOTE: For most sites, a 20-day comment period should be sufficient. Use 30 days or more for sites with a high level of public interest.</i></p>	<p>8. Confirms the Covenant is loaded into DSARS.</p> <p>9. Sends a notice of the proposed Release to the following persons. <i>This notice must be sent for both formal process and VCP sites. See <b>Attachment A</b> for a suggested letter template for this notice:</i> <sup>4</sup></p> <ul style="list-style-type: none"> <li>• Each person who signed the Covenant or a subordination agreement, unless that person waived their right to consent to the Release;</li> <li>• Each person currently holding a recorded interest in the real property subject to the Covenant;</li> <li>• Each person currently in possession of the real property subject to the Covenant (such as renters);</li> <li>• The local government with land use planning authority for the site;</li> <li>• Each person to whom the Covenant expressly grants the power to enforce the Covenant; and</li> <li>• If not included in the above, other persons who were sent notices when the Covenant was originally established. <sup>5</sup></li> </ul>
<p><b>Cleanup Project Manager</b></p> <p><b>or</b></p> <p><b>Community Outreach and Environmental Education Specialist</b></p> <p><i>See the attached Checklist for a summary of public involvement requirements for releasing Covenants.</i></p>	<p>10. Under WAC 173-340-440(12), a public notice must also be sent to members of the general public, including the following. <i>This notice must be sent for both formal process and VCP sites.</i></p> <ul style="list-style-type: none"> <li>• Persons who have made a timely request of the department;</li> <li>• Persons residing in the potentially affected vicinity of the proposed action;</li> <li>• Ecology’s Site Register coordinator (for publication in the Site Register); and</li> <li>• The local newspaper (for display ad or legal notice).</li> </ul>

<sup>4</sup> The term “person,” as used in Step 9, includes any successors in interest.

<sup>5</sup> Such as community leaders and organizations identified in the original public participation plan. Persons no longer residing in or having an ownership interest within the potentially affected vicinity do not need to be noticed.

<p><b>Cleanup Project Manager</b></p>	<p>11. If the persons receiving notice in Steps 9 and 10 identify concerns with the proposed Release, contacts AGO to discuss options.</p> <p>12. Sends final Release to PLP / VCP Customer or Property Owner.</p>
<p><b>PLP / VCP Customer or Property Owner</b></p>	<p>13. Arranges for current Property Owner and others who signed the original Covenant to sign the Release (unless that person waived their right to consent to the Release).</p> <p>14. Sends signed Release to Ecology.</p>
<p><b>Section Manager</b></p>	<p>15. Signs Release.</p>
<p><b>Cleanup Project Manager</b></p>	<p>16. Retains a copy and returns signed original Release to PLP / VCP Customer or Property Owner for recording.</p>
<p><b>PLP / VCP Customer or Property Owner</b></p>	<p>17. Records Release.</p> <p>18. Sends original recorded Release to Ecology.<sup>6</sup></p> <p>19. Sends a copy of the recorded Release to the following persons:</p> <ul style="list-style-type: none"> <li>• Each person who signed the Covenant;</li> <li>• Each person currently holding a recorded interest in the real property subject to the Covenant;</li> <li>• Each person currently in possession of the real property subject to the Covenant (such as renters).</li> <li>• Each person to whom the Covenant expressly grants the power to enforce the Covenant;</li> <li>• The local government with land use planning authority for the site; and</li> <li>• If not included in the above, other persons who commented on the proposed Release.</li> </ul>

<sup>6</sup> Some Counties retain the original. If that is the case, make sure Ecology receives a legible copy of the recorded Release with all the signatures and with the recording number.

<p><b>Cleanup Project Manager</b> <b>or</b> <b>Assigned Staff</b> <sup>7</sup></p>	<p>20. Retains a <u>copy</u> of the Release for the site file.</p> <p>21. Sends the <u>original</u> recorded Release to Fiscal Services or to the Regional Office’s secure location for safekeeping, along with the original Covenant.</p> <p>22. Arranges for relevant information to be entered into ISIS and DSARS, and updates the site’s web page, if applicable.</p>
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<sup>7</sup> In some offices this is done by the Cleanup Project Manager; in other offices, the Community Outreach and Environmental Education Specialist or Administrative support staff may do this.

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**Public Involvement Checklist for  
Release of Environmental Covenants at  
Both VCP and Formal Process Sites**

## Public Involvement Checklist for Release of Environmental Covenants at Both VCP & Formal Process Sites

The following public involvement steps are excerpted from Procedure 440C. Some of the steps may be completed by the PLP or VCP customer, instead of Ecology. *This is a summary checklist. For detailed instructions on how to complete these steps, and who should complete them, see Procedure 440C and the instructions included with the Termination and Release of Covenant template.*

For most sites, a 20-day comment period should be sufficient. Use 30 days or more for sites with a high level of public interest.

- ✓ Conduct a title search to identify all persons currently holding a recorded interest in the real property. This information is needed for the letters to be sent in the next step.
- ✓ Send letter to following persons. This letter should be sent no later than when the general public is notified. See Attachment A in Procedure 440C for an example notification letter. The letter must be sent to:
  - Each person who signed the Covenant (unless they waived their right to consent to the Release).
  - Each person currently holding a recorded interest in the real property subject to the Covenant (property owners, persons with ROW/Easement across property, mortgage holders, holders of other property rights (mineral, water rights)).
  - Each person currently in possession of the real property subject to the Covenant (such as renters).
  - The local government with land use planning authority for the site.
  - Each person to whom the Covenant expressly grants the power to enforce the Covenant.
  - If not included in the above, other persons who were sent notices when the Covenant was originally established.<sup>8</sup>

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<sup>8</sup> Such as community leaders and organizations identified in the original public participation plan. Persons no longer residing in potentially affected vicinity or having an ownership interest within the potentially affected vicinity do not need to be noticed.

## **General Public Notice Instructions**

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To fulfill the public notice requirement in WAC 173-340-440(12), the following additional tasks must be completed:

- ✓ Create and distribute postcard or fact sheet that a) announces the proposed removal of the Covenant and b) solicits comments. This should describe in general terms what restrictions were put on property and why they are now proposed to be removed. The comment period should be at least 20 days; consider providing 30 days for sites with significant public interest.
  - 300 foot radius for VCP sites.<sup>9</sup>
  - Quarter mile radius for formal process sites.<sup>9</sup>
  - Neighborhood and business associations encompassing site.
  - Plus any person or organization that has asked to be noticed.
- ✓ Arrange for translation of site notices, fact sheets, and other documents as appropriate.
- ✓ Update ISIS
- ✓ Create DSARs entry
- ✓ Create/update the site web page
- ✓ Create and arrange for the publishing of a Display or Legal Ad
- ✓ Create and submit a Site Register notice for publishing
- ✓ Add notice to Ecology's Public Calendar
- ✓ Inform your media consultant

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<sup>9</sup> Recommended distance, actual distance may vary depending on level of public interest and extent of potentially-affected vicinity.

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**Attachment A:**  
**Proposed Release of Covenant Notification Letter**

## Attachment A

### **Proposed Release of Covenant Notification Letter**

Use this letter to notify the required persons when proposing to release an environmental covenant.

See Procedure 440C for additional instructions for using this letter.

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Before releasing an environmental covenant, Ecology is required under WAC 173-340-440(12) to provide the public with notice and an opportunity to comment. The purpose of this notice is to seek confirmation that the conditions on the property requiring the covenant no longer exist. The persons who should receive this notice are described in the public notification checklist attached to this Procedure.

As part of this public notification process, a specific notification letter must be sent to the persons who would most likely challenge the Release. These are:

- Each person who signed the Covenant;
- Each person currently holding a recorded interest in the real property subject to the Covenant (including each person who subordinated their interests to Ecology's Covenant). This will require an updated title search to confirm these persons;
- Each person currently in possession of the real property subject to the Covenant (such as renters);
- Each person to whom the Covenant expressly grants the power to enforce the Covenant;
- The local government land use planning authority for the site. While technically the Mayor or Executive has this authority, this procedure recommends contacting the staff who work with land use issues. However, if the jurisdiction prefers the contact be through the local elected executive, the letter can be sent to them instead. Use the following table as a guide:

<b>Jurisdiction</b>	<b>Department</b>
City or Town	City or Town Planning Department
Unincorporated Areas	County Planning Department
Urban Growth Areas Not Annexed to City or Town	Both City or Town Planning Department and County Planning Department

Note that in larger communities, planning staff who work on zoning and comprehensive plan issues are typically different than those who review development proposals. *Make sure you are talking to the right staff;*

- If not included in the above, other persons who were sent notices when the Covenant was originally established (such as persons or organizations identified in the public participation plan).

[Print on Ecology letterhead]

[DATE]

[NAME]

[ORGANIZATION]

[ADDRESS]

Re: **Proposed Release of Activity and Use Restrictions at the following Cleanup Site:**

- **Site Name:** [CLEANUP SITE NAME]
- **Site Address:** [CLEANUP SITE ADDRESS]
- **Cleanup Site ID:** [CSID NUMBER]
- **Facility/Site ID:** [FSID NUMBER]
- **Tax Parcels:** [TAX PARCEL NUMBERS]
- **VCP Project ID:** [VCP PROJECT NUMBER] (Delete if not applicable)
- **Covenant Recording #:** [RECORDING NUMBER FOR COVENANT]

Dear [NAME]:

The purpose of this letter is to notify [your agency/you] that the Department of Ecology (Ecology) is proposing to release (remove) an environmental covenant (Covenant) that restricts certain uses and activities on the above-referenced property as part of the cleanup of the [SITE NAME] (Site). The restrictions were established to protect human health and the environment and integrity of the remedial actions at the Site.

Ecology has preliminarily determined the conditions on the property that originally required the Covenant no longer exist. A detailed description of the remedial actions conducted and the current conditions at the Site can be found at [webpage for site].

Based on this determination, the following restrictions appear to be no longer necessary for this property:

[LIST RESTRICTIONS IN SUMMARY FORM]

A full copy of the restrictions can be found on Ecology's Environmental Covenant Registry at [http://www.ecy.wa.gov/programs/tcp/sites\\_brochure/SiteLists.htm](http://www.ecy.wa.gov/programs/tcp/sites_brochure/SiteLists.htm). Search for the site using the above facility/site identification number.

Ecology is seeking your input on the proposed release of the property restrictions in accordance with WAC 173-340-440(12). If you believe the restrictions are still necessary to protect human health or the environment, or the integrity of the remedial actions at the Site, please respond to this letter with your reasons for keeping the restrictions.

Ecology would appreciate your response in writing by letter or e-mail by [DATE].<sup>1</sup> If we do not hear from you by this date, we will assume you have no concerns with this proposal. A copy of the document releasing the Covenant will be sent to you after it is recorded.

If you have any questions regarding this letter or the cleanup of the Site, please feel free to contact me at [E-MAIL] or [PHONE].

Sincerely,

[ECOLOGY CLEANUP PROJECT MANAGER]

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<sup>1</sup> Unless another deadline has been agreed to through a prior conversation, provide at least 20 calendar days for a response and 30 days for sites with a high level of public interest.

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**Attachment B:**

**Termination and Release of Covenant  
Template and Instructions**

## **Attachment B**

### **Termination and Release of Covenant Template and Instructions**

Use this Release when the conditions that triggered the need for an environmental covenant no longer exist at a site.

See Procedure 440C for additional instructions for using this Release.

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WAC 173-340-440 (12) requires that any proposal to release an environmental covenant must be publicly-noticed and an opportunity provided for public comment. See Policy 440C for a checklist for insuring adequate public notice is provided.

To release an environmental covenant, the following persons must agree and sign the Release under RCW 64.70.100(1):

- (a) The Department of Ecology (Ecology).
- (b) Unless waived by Ecology, the current owners of the fee simple of the real property subject to the covenant (i.e., landowner).
- (c) Each person who originally signed the covenant, unless:
  - The person waived their right to consent in the covenant, or
  - A court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence.

*If you determine that a person who originally signed the Covenant no longer exists or cannot be located, contact the AGO to discuss your options.*

- (d) Holders of the covenant, other than Ecology.

*If there are additional holders of the covenant, discuss with the AGO how to best incorporate them in the Release.*

NOTE: Persons who signed a subordination agreement do not need to sign the Release. But these persons should still be notified of the Release, once it is executed (signed and recorded).

There are specific formatting requirements that apply to recorded documents. For example, there must be a three-inch margin on the top of the first page and a one-inch margin on the bottom and sides. See Chapter 65.04.045 RCW for additional format requirements.

After Recording Return

Original Signed Release to:

[ECOLOGY CONTACT NAME AND ADDRESS]

**TERMINATION AND RELEASE OF ENVIRONMENTAL COVENANT <sup>1</sup>**

**Grantor:** State of Washington, Department of Ecology

**Grantee:** [CURRENT LANDOWNER]

**Brief Legal Description:** [BRIEF LEGAL DESCRIPTION OF PROPERTY]

**Cleanup Site ID:** [CSID NUMBER]

**Facility/Site ID:** [FSID NUMBER]

**Tax Parcel Nos.:** [RELEVANT TAX PARCEL NUMBERS]

**Cross-Reference:** [ORIGINAL RECORDING NUMBER FOR COVENANT]

Pursuant to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW; the Uniform Environmental Covenants Act, RCW 64.70.100; and WAC 173-340-440, the Washington State Department of Ecology (Ecology) has determined, after public notice and comment, that the Environmental Covenant (hereafter "Covenant") filed of record in \_\_\_\_\_ County under Auditor File Number \_\_\_\_\_ on [DATE OF RECORDING] between [LANDOWNER(S) AND OTHER(S)] as Grantor(s) and Ecology as Grantee or Holder of the Covenant over the property legally described [below OR in Exhibit A] is no longer necessary under MTCA and its implementing regulations, Chapter 173-340 WAC, to protect human health and the environment and the integrity of the remedial action. Ecology hereby consents to termination and release of the Covenant and relinquishes and quitclaims to [NAME(S) OF CURRENT OWNER(S) AND OTHER(S)] any and all rights it may have that were created by the Covenant.

This document is not a settlement under MTCA. Ecology's signature below does not constitute a covenant not to sue or a compromise of Ecology's authority or rights other than those rights created by the Covenant itself.

The legal description of the property subject to the Covenant is as follows:

[INSERT LEGAL DESCRIPTION FROM COVENANT]

**OR**

The legal description of the property subject to the Covenant is described in Exhibit A.

[INSERT LEGAL DESCRIPTION IN EXHIBIT A AND ATTACH]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

\_\_\_\_\_ [SIGNATURE] \_\_\_\_\_

by: \_\_\_\_\_ [PRINTED NAME] \_\_\_\_\_

Title: \_\_\_\_\_

<sup>1</sup> Use same term as used in original document: i.e. deed restriction, restrictive covenant, or environmental covenant.

**STATE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I certify that \_\_\_\_\_ personally appeared before me, acknowledged that **he/she** is the \_\_\_\_\_ of the state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

\_\_\_\_\_  
Notary Public in and for the State of Washington

Residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

**CONSENT TO TERMINATION AND RELEASE OF COVENANT**

**For a list of persons other than Ecology who must sign the Release, see the preface to this template. Each person who signs the Release must have a separate signature block and applicable notary acknowledgement. Repeat as many times as necessary.**

The undersigned [**PERSON'S NAME**] hereby consents to the release and termination of the above-described Environmental Covenant.

\_\_\_\_\_ [**SIGNATURE**] \_\_\_\_\_

by: \_\_\_\_\_ [**PRINTED NAME**] \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**Insert one of the following, as applicable. See example format on next page:  
INDIVIDUAL ACKNOWLEDGMENT  
CORPORATE ACKNOWLEDGMENT  
REPRESENTATIVE ACKNOWLEDGEMENT**

**INDIVIDUAL ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I certify that \_\_\_\_\_ personally appeared before me, acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public in and for the State of Washington <sup>2</sup>  
Residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

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**CORPORATE ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I certify that \_\_\_\_\_ personally appeared before me, acknowledged that **he/she** is the \_\_\_\_\_ of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

\_\_\_\_\_  
Notary Public in and for the State of Washington <sup>3</sup>  
Residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

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**REPRESENTATIVE ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I certify that \_\_\_\_\_ personally appeared before me, acknowledged that **he/she** signed this instrument, on oath stated that **he/she** was authorized to execute this instrument, and acknowledged it as the \_\_\_\_\_ **[TYPE OF AUTHORITY]** of \_\_\_\_\_ **[NAME OF PARTY BEING REPRESENTED]** to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

\_\_\_\_\_  
Notary Public in and for the State of Washington <sup>3</sup>  
Residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

\_\_\_\_\_  
<sup>2</sup> Where landowner is located out of state, replace with appropriate out-of-state title and location.

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