INTERIM REPORT

AREA-WIDE SOILS CONTAMINATION TASK FORCE

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AREA WIDE SOILS CONTAMINATION TASK FORCE

In response to increasing public concerns about arsenic and lead soil contamination, the Washington State Legislature appropriated $1.2 million to prepare a statewide strategy to address this problem. The main focus for the project is on areas with low to moderate levels of lead and arsenic that have been developed into residential neighborhoods, schools, day cares and parks. Typically, this low to moderate level soil contamination was caused by historical sources such as smelter emissions and past use of lead and arsenic based pesticides, and is not amenable to more traditional cleanup approaches because of the number of parcels potentially affected, the levels of contamination, and other reasons. The Departments of Ecology, Agriculture and Health and the Office of Community Development are examining these issues and concerns and will develop a more effective strategy for responding to widespread arsenic and lead soil contamination.

The agencies have identified three general project objectives:

- Improve our understanding of the nature and geographic extent of widespread soil contamination problems;
- Identify feasible measures for protecting the health of people who live and work on or near properties that contain widespread low-to-moderate levels of soil contamination; and,
- Identify current institutional frameworks (e.g., laws, regulations, land use planning processes, etc.) and changes that will improve efforts to prevent threats to public health posed by widespread low-to-moderate level soil contamination.

A central feature of the project is the Area-Wide Soil Contamination Task Force. The role of the task force is to provide findings and recommendations to the four chartering agencies on actions that can be taken to improve the ways in which area-wide soil contamination problems are addressed in Washington State. The task force is expected to complete its work by June 2003. The task force is comprised of 17 members, including representatives of the following stake-holder interest groups: local government; elected officials; agricultural; environmental; business/development; financial; and educational/schools. The four state agencies participate as *ex officio* members of the task force.

Area Wide Soils Contamination Task Force Web Page

A web-site has been created and currently available at the following address:

http://www.ecy.wa.gov/programs/tcp/area_wide/area_wide_hp.html

BACKGROUND:

What is Known and Not Known about the Location and Extent of Area-Wide Arsenic and Lead Soil Contamination?

Elevated levels of arsenic and lead are present in soil in some areas of Washington State from a number of historical sources, including metal smelters, lead arsenate pesticides, and emissions from the use of leaded gasoline. In areas affected by smelter emissions and areas where lead arsenate pesticides were applied to crops, concentrations of arsenic and lead in soil are generally higher than concentrations that occur naturally in Washington soils and higher than State soil cleanup levels established under the Model Toxics Control Act; however, concentrations are generally lower than those found at smelter operation sites and in areas where lead arsenate pesticides were mixed and formulated. Low-to-moderate levels of arsenic and lead soil contamination that are associated with areas affected by smelter emissions and areas where lead arsenate pesticides were applied to crops are referred to as "area-wide soil contamination" to distinguish it from contamination at more traditional contaminated sites.

The precise boundaries of area-wide soil contamination areas are not defined; however, certain areas have a higher likelihood of elevated levels of arsenic and lead in soil, based on the locations of metal smelters or the estimated use of lead arsenate pesticides from approximately 1905 to 1947. Areas affected by smelter emissions in King, Pierce, Snohomish, and Stevens counties have a higher likelihood of elevated levels of arsenic and lead in soil based on historical emissions of metal smelters located in Tacoma, Harbor Island, Everett, Northport, and Trail, BC. Areas where apples and pears were historically grown have a higher likelihood of elevated levels of arsenic and lead in soil based on historical use of lead arsenate pesticides. Chelan, Spokane, Yakima, and Okanogan counties have a higher likelihood than other counties for elevated levels of lead and arsenic in soil based on the higher numbers of apple and pear trees in production there between 1905 and 1947. The full extent of area-wide soil contamination from past use of leaded gasoline in Washington is not known; however, in general, land adjacent to any road constructed prior to 1995 has some likelihood of elevated levels of lead in soil from leaded gasoline.

REAL ESTATE DISCLOSURE:

Our current practices of Real Estate Disclosure are centered around the Real Property Transfer Disclosure Statement (WAR Form D-5 & NWMLS Form 17) for 1 – 4 single-family properties and the Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards for homes built prior to 1978.

The Real Property Transfer Disclosure Statement is a mandatory form adopted by the Washington State Legislature in 1995 under RCW 64.06. The Lead Based Paint

Disclosure was created in October 1992 as part of the Residential Lead Based Paint Reduction Act of 1992—Title X.

Agents listing and selling single-family 1-4 properties are quite familiar with the use of the Real Property Transfer Disclosure Statement. When the form was originally implemented it was used on a voluntary basis. When used on a voluntary basis many sellers refused to complete the form, and in fact many agents refused to provide the form to the seller calling it unnecessary. After the legislature acted to make the form mandatory, the use has been common place.

While Real Estate Licensee's are quite familiar with the practice and procedure of providing the Lead-Based Paint Disclosure Form and the EPA Pamphlet "Protect Your Family From Lead In Your Home" for the most part they are unaware of the definitions contained in Title X. Title X defines Lead-Based Paint Hazards in Section 1004 Definitions as follows: (Bold highlight added for emphasis).

> **(15) Lead-based paint hazard.** The term **"lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint** that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.
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> **(16) Lead-contaminated dust. The term "lead-contaminated dust" means surface dust in residential dwellings that contains an area or mass concentration of lead in excess of levels determined by the appropriate Federal agency to pose a threat of adverse health effects in pregnant women or young children.**
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> **(17) Lead-contaminated soil. The term "lead-contaminated soil" means bare soil on residential real property that contains lead at or in excess of the levels determined to be hazardous to human health by the appropriate Federal agency.**

The EPA may not have thought of wide spread low to moderate lead and arsenic soil contamination from smelters, historical pesticide usage, and leaded gasoline emissions. They were clearly concerned with "deteriorating paint" in homes and apartments built prior to 1978. Nevertheless, the definition clearly covers the issue the Area-Wide Soils Contamination Task Force is deliberating at this time.

DEVELOPED AGRICULTURAL LANDS:
Over the years communities have expanded into former agricultural lands which have been developed into schools, parks, and residential housing. Some of these areas have been developed AFTER 1978. The homes built on these "potentially contaminated" sites are outside of the required EPA disclosure (homes built prior to 1978). However the land

these homes are on may contain levels of lead and arsenic in the soils above the EPA tolerances.

After reviewing the definitions in Title X it is apparent to me that the disclosure should be expanded to include properties which may have or may contain lead contaminated soil or lead contaminated dust. Simply expanding the use of the existing Lead-Based Paint Disclosure would address the issue of homes built on "potentially contaminated" land after 1978. Another alternative would be to adopt materials and tools created specifically for area wide soils contamination, , such as those contemplated in the draft Area-Wide Soil Contamination Task Force recommendations.

VACANT LAND DISCLOSURE:
The current practice of disclosure on Vacant Land transactions is "Voluntary". The seller must of course disclose "any known material defect". ***Is Low to Moderate levels of lead and arsenic in soil considered a material defect? Low to moderate being defined as above the MTCA cleanup levels of 500 ppm for lead and 20 ppm for arsenic.***

It is my opinion that in order to apply a uniform and consistent method to inquire of the seller's knowledge of the property a Vacant Land Disclosure must become mandatory. Without the required use of the disclosure there would be an inconsistent application of disclosure. One firm may decide to use the form while another may decide to not use the form. Business practices of this nature should be created and applied in a uniform manner as a Standard of Practice to protect the agent as well as the public.

RISK REDUCTION TOOL
I am of the opinion that creating a "mandatory vacant land disclosure" is a prudent approach to shifting the liability away from the real estate licensee. In our current practice we are leaving listing and selling agents exposed to undisclosed facts in vacant land transactions. "The agent knew or should have known the site was or the home was built on former orchard land".

In my local association (North Central Washington Association of Realtors) we have created an "Environmental Disclaimer" for use on all transactions (see attached). However the use of this form is once again voluntary. The benefit of using the Environmental Disclaimer is it puts all the parties to the transaction on notice of several environmental issues. The danger of not having its use as a Standard of Practice should be clear, one buyer was put on notice, another wasn't.

RECOMMENDATION:
It is my recommendation to the Washington Association of Realtors that

1. An effort be immediately undertaken to create legislation for a Real Property Transfer Disclosure Statement - Vacant Land. In the interim the use of the current "Seller's Property Condition Report – Vacant Land" W.A.R. Form D-3 should be recommended and encouraged to be used in all vacant land

sales until such time as the legislative process can be completed creating the Mandatory Vacant Land Disclosure Form.

2. The use of the Lead-Based Paint Disclosure Form and the EPA Pamphlet "Protect Your Family From Lead In Your Home" be expanded and used in all transactions. OR a similar disclosure documentation that would put the parties on notice of the potential presence of Contaminated Soils where area-wide soil contamination is likely.
3. Create an education course or include in existing course materials information regarding the findings and recommendations from the Area-Wide Soils Contamination Task Force to increase the awareness of the issue.
4. Include an article in the Washington Realtor regarding the Area-Wide Soils Contamination Task Force findings and recommendations, when published, and provide the key elements of Individual Protection Measures.

CONCLUSION:
The Task Force is finalizing the report at this time. The final report is due out in June 2003. In May a series of Public Involvement Meetings will be held in Seattle/Tacoma, Yakima, Wenatchee and Spokane. From these sessions comments on the "draft report" will be brought back to the Task Force.

Some task force members are un-decided about recommending expanding the disclosure requirements. I feel it is the only way that we can limit liability exposure for licensees.

I respectfully request and urge the Board of Directors of Washington Association of Realtors to endorse this concept and move forward with the recommendations set forth in this report.

Respectfully submitted,

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Co-Chair
Area-Wide Soil Contaminations Task Force