

State of Washington
Department of Ecology

In the Matter of Remedial Action by:
King County Agreed Order
No. DE 16950

To: King County
Department of Natural Resources
Wastewater Treatment Division
King Street Center
201 South Jackson Street
Seattle, WA 98104-3855

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Exhibit A Denny Way Combined Sewer Overflow Approximate Location Diagram

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1. Introduction

The mutual objective of the State of Washington, Department of Ecology (Ecology) and King County, through its Wastewater Treatment Division (King County) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires King County to prepare and submit a Remedial Investigation (RI) Report, a Feasibility Study (FS), and a DRAFT Cleanup Action Plan for the Denny Way Combined Sewer Overflow (CSO) Site. Ecology believes the actions required by this Order are in the public interest. This Agreed Order fully supersedes and replaces Agreed Order No. DE 5068.

2. Jurisdiction

This Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.050(1).

3. Parties Bound

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with this Order. King County agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter King County's responsibility under this Order. King County shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

4. Definitions

Unless otherwise specified herein, the definitions set forth in RCW 70A.305, WAC 173-204 and WAC 173-340 shall control the meanings of the terms in this Order.

- 4.1 **Site:** The Site is referred to as Denny Way Combined Sewer Overflow (CSO). The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been

deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is generally located in the offshore areas next to Myrtle Edwards Park in the vicinity of the former Denny Way CSO proximate to the address 3165 Alaskan Way, Seattle, Washington, as shown in the Denny Way CSO Approximate Location Diagram (Exhibit A).

- 4.2 **Parties:** Refers to the State of Washington, Department of Ecology and King County.
- 4.3 **Potentially Liable Persons (PLP(s)):** Refers to King County.
- 4.4 **Agreed Order or Order:** Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order.
- 4.5 **Proposed Denny Way CSO Sediment Cleanup Unit (SCU):** Refers to the Denny Way CSO portion of the Site, designated by Ecology under the authority of WAC 173-204-500(4)(a) for expediting cleanup. The Denny Way CSO SCU will be intended to be utilized as a mechanism for effectuating cleanup near the sediment area below the base of shoreline riprap within approximately 800 feet of former City of Seattle and King County CSO outfalls at Myrtle Edwards Park that may have been affected by historical wastewater releases, as shown in Exhibit A. The SCU will ultimately be defined pursuant to the actions taken under this Order.

5. Findings of Fact

Ecology makes the following findings of fact, without any express or implied admissions of such facts by King County:

- 5.1 Based upon factors currently known to Ecology, the Site is generally located in the offshore areas next to Myrtle Edwards Park in the vicinity of the former Denny Way CSO proximate to the address 3165 Alaskan Way, Seattle, Washington, as shown in the Denny Way CSO Approximate Location Diagram (Exhibit A). The Site is located at a latitude of 47.615° and longitude of -122.355° and encompasses property owned by the State of Washington (State) and managed by the Washington Department of Natural Resources (DNR). The DNR has provided and leased a portion of state-owned aquatic lands as an easement to King County for the operation of the Denny Way/Lake Union CSO outfall.
- 5.2 The Municipality of Metropolitan Seattle (Metro, now merged with King County) acquired the sewage outfall at Denny Way in 1962. Metro constructed a combined sewer overflow that discharged through this outfall. Until 2002, the CSO discharge

point was at the shoreline. This outfall was previously exposed during normal low tide and discharged directly across the beach.

- 5.3 In 1990, King County and the U.S. Army Corps of Engineers sponsored the Denny Way CSO capping project to test the feasibility of capping contaminated sediments. A 3-foot layer of clean dredged sand was placed over a 3-acre area of the Site.
- 5.4 In the late 1990s, King County proposed constructing two new outfalls—one a 100 foot extension of the pre-existing CSO outfall for untreated CSO events, and the other a deeper outfall for processed effluent. In 2000, the National Marine Fisheries Service (NMFS) issued a Biological Opinion under the Endangered Species Act because NMFS determined that the County’s proposal would likely adversely affect chinook salmon. The Biological Opinion requires King County to monitor the sediments in the area of the outfalls based on a sampling plan.
- 5.5 Upgrades to the water treatment system completed by King County in 2005 significantly reduced the discharge of wastewater from the CSO and extended the discharge points (outfalls) into deeper water.
- 5.6 Site studies performed in 1997 and 2005 by King County characterized surface and subsurface sediment contamination surrounding the existing sediment cap. Based on these and other sampling data, hazardous substances found at the Site include, but are not limited to, cadmium, copper, lead, mercury, silver, polychlorinated biphenyls (“PCBs”), polycyclic aromatic hydrocarbons (“PAHs”), bis(2-ethylhexyl)phthalate, and butyl benzyl phthalate. Sources of releases included the historical discharges from the Denny Way CSO outfall.
- 5.7 In November 2007 an Agreed Order (DE 5068) was signed by Ecology and King County. It required King County to conduct an interim action to clean up contaminated sediment in nearshore areas. The remedial activities included: dredging and back-filling; collection of sediment grab and core samples adjacent to the dredged areas to document post dredge sediment quality conditions; post-backfill sediment quality sampling in the interim action area; and continued sediment sampling under the Biological Opinion dated June 19, 2000.
- 5.8 The 2007 Agreed Order and permit conditions for the 2005 outfall construction project required King County to perform detailed surface sediment monitoring of the Denny Way CSO area. The monitoring data collected to date have tracked surface sediment

quality of un-remediated offshore areas beyond the limits of the current cap, in addition to the inshore backfill/sand cover areas.

5.9 Because of the previous source control and interim sediment cleanup actions summarized above, a series of detailed sediment quality investigations have been completed in and around the Site. Those investigations include:

- Denny Way CSO Toxicant Reduction Study (1987)
- Elliott Bay Duwamish Restoration Program Recontamination Study (1995)
- Denny Way Sediment Characterization (1998)
- Denny Way Sediment Cap Monitoring (1999)
- Denny Way Pre-Construction Sediment Characterization Study (2001)
- Denny Way Sediment Cap Monitoring (2005)
- Post-Construction Sediment Monitoring (2005)
- Denny Way Pre-Remedial Design Sediment Sampling and Analysis (2007)
- Denny Way Long-Term Sediment Monitoring (2008 and 2016)

5.10 Sediment investigations have also been conducted by Ecology and others in the area. Recent (2008 to 2018) sediment data collected by King County, Ecology, and others in and around the Site are available in Ecology's Environmental Information Management (EIM) database.

5.11 In 2018, King County published a Long Term Sediment Monitoring Program Report to evaluate the effects of the County's 2005 CSO control project. Results indicated mercury, phthalates, and PAHs above cleanup screening levels outside of the cap.

6. Ecology Determinations

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by King County.

- 6.1 King County is an “owner or operator” as defined in RCW 70A.305.020(22) of a “facility” as defined in RCW 70A.305.020(8).
- 6.2 Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70A.305.020(32), (13), respectively, has occurred at the Site.
- 6.3 Based upon credible evidence, Ecology issued a PLP status letter to King County dated June 19, 2007, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that King County is a PLP under RCW 70A.305.040 and notified King County of this determination by letter dated July 10, 2007. Solely for the purpose of entering into the prior Administrative Order with Ecology, and making no admission of liability, King County waived its right to notice and comment and accepted status as a PLP.
- 6.4 Pursuant to RCW 70A.305.030(1), .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.
- 6.5 Under WAC 173-204-500(4)(a), Ecology may establish sediment cleanup units (SCUs) within a site for the purpose of expediting cleanup. Ecology has determined that the use of sediment cleanup units may serve to expedite cleanup in one area of inner Elliott Bay with elevated levels of contamination.
- 6.6 Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Either party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section 7.13 If the Parties are not in agreement, Ecology reserves

its authority to require interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake interim action itself.

7. Work to be Performed

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that King County take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340 and 173-204:

- 7.1 **Remedial Investigation:** King County will prepare and submit to Ecology a Remedial Investigation (RI) Report, consistent with WAC 173-340-350 and WAC 173-204-550, the Work Plan (Exhibit B), and the Schedule of Deliverables (Exhibit C). The RI will compile and assess the information gathered by King County as the result of previous investigations at the Site. The RI will analyze and identify whether any data gaps exist concerning contaminants, including but not limited to, copper, lead, mercury, silver, phthalates, PCB congeners, dioxins and furans, PAHs, and carcinogenic PAHs. The RI may also define a SCU if appropriate. The RI Report will include a Public Review Draft RI Report and a Final RI Report in accordance with the schedule shown in Exhibit C.
- 7.2 Supplemental RI (if required) and Final RI: If Ecology determines that additional data are needed to characterize the nature and extent of contamination within the Site, Ecology may require King County to prepare and submit to Ecology for review and approval a Supplemental RI work plan in compliance with WAC 173-204-550, to further characterize the nature and extent of contamination at the Site. The work plan will identify data collection procedures and address potential cultural and historical resources, including an inadvertent discovery plan. After implementing the work plan, King County will incorporate the results and submit a Revised Agency Review Draft RI Report. Subsequent to the Agency Review or Revised Agency Review Draft RI Report, as applicable, the County will submit a Public Review Draft RI Report and a Final RI Report.
- 7.3 Following Ecology approval of the Public Review Draft RI Report, and following post-construction monitoring for any interim action implemented pursuant to Section 6.6 King County will prepare and submit to Ecology a Feasibility Study (FS) Report that meets the requirements of WAC 173-340-351 and WAC 173-204-550, submitted to Ecology in accordance with the schedule shown in Exhibit C. The FS Report will include

a Public Review Draft FS Report and a Final FS Report in accordance with the schedule shown in Exhibit C.

- 7.4 **Preliminary Draft Cleanup Action Plan (DCAP):** King County will prepare and submit to Ecology for review and approval a Preliminary Draft Cleanup Action Plan (DCAP) for the Site or the approved SCU defined in the RI, that meets the requirements of WAC 173-340-380 and WAC 173-204-570 pursuant to the schedule in Exhibit C. After making revisions based on Ecology's comments on the Agency Review DCAP, King County will prepare and submit a Public Review DCAP pursuant to the schedule in Exhibit C.
- 7.5 The Preliminary DCAP will include as an appendix an Institutional Control (IC) Plan for the Site, developed in consultation with the appropriate state and federal agencies. The IC Plan will contain proposed restrictions and protections, a legal description of the IC area(s), and a depiction of the IC area(s). The IC Plan will address such matters as waterway signage on prohibited activities, vessel size and speed, signage regarding protection of capped areas, lease prohibitions or usage restrictions and notifications, as well as a plan for enforcing the waterway restrictions. The IC Plan will address restrictive covenants and/or a covenant alternative, as appropriate, for the protection of capped sediment areas, consistent with WAC 173-340-440.
- 7.6 All submittals to Ecology shall meet the General Submittal Requirements of WAC 173-340-840 and Toxics Cleanup Program Policy 840: Data Submittal Requirements. King County shall submit AutoCad or GIS files used to compose any figures. In addition, King County will submit Excel files of the data used to compose any tables.
- 7.7 The following naming conventions shall be used for documents: Agency Review Draft (designation for the first time Ecology receives a document); Public Review Draft (designates a document ready for public comment); Final (designation for a document after public comment and Ecology approval); and the Preliminary Draft Cleanup Action Plan (designation for the PLP's version of the Cleanup Action Plan).
- 7.8 Agency Review Draft reports shall be submitted in Microsoft Word and Adobe Acrobat (.pdf) formats. Public Review Draft and Final reports will be submitted in both paper and electronic format as specified by Ecology. Paper copies shall include a CD with the report in Adobe Acrobat (.pdf) format bound into the document.
- 7.9 King County shall be the lead agency responsible for complying with the State Environmental Policy Act (SEPA) rules including preparing and submitting an environmental checklist. If the result of the threshold determination is a determination of significance (DS), King County shall be responsible for the preparation of the Draft

Environmental Impact Statement. King County shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

- 7.10 If King County learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in any media, e.g., sediments or surface water, King County, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.
- 7.11 King County shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Order. All Progress Reports shall be submitted by the fifteenth (15th) day of each month after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by certified mail, return receipt requested, to Ecology's project coordinator. The Progress Reports shall include the following:
- 7.11.1 A list of on-site activities and progress on the Schedule of Deliverables (Exhibit C) that were completed during the previous month.
 - 7.11.2 Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
 - 7.11.3 Description of any deviations from the Schedule of Deliverables (Exhibit C) during the current quarter and any planned deviations in the upcoming quarter.
 - 7.11.4 For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
 - 7.11.5 All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.
 - 7.11.6 A list of deliverables for the upcoming quarter if different from the schedule.

- 7.12 All plans or other deliverables submitted by King County for Ecology's review and approval under the Schedule of Deliverables (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Order. King County shall take any action required by such deliverable.
- 7.13 Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Any Party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, King County shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, according to the schedule in Exhibit C. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). King County shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and King County is required to conduct the interim action in accordance with the approved Interim Action Work Plan. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake the interim action itself.
- 7.14 If Ecology determines that King County has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to King County, perform any or all portions of the remedial action or at Ecology's discretion allow King County opportunity to correct. In an emergency, Ecology is not required to provide notice to King County, or an opportunity for dispute resolution. King County shall reimburse Ecology for the costs of doing such work in accordance with Section 8.1 (Payment of Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section 10 (Enforcement).
- 7.15 Except where necessary to abate an emergency situation or where required by law, King County shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section 8.11 (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, King County must notify Ecology in writing

of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

8. Terms and Conditions

8.1 Payment of Remedial Action Costs

King County shall pay all costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70A.305, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173 340 550(2). Ecology has accumulated \$29,991.54 in remedial action costs related to this Site as of November 30, 2025. For all Ecology costs incurred, King County shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70A.305.060, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

8.2 Designated Project Coordinators

The project coordinator for Ecology is:

Brett Carp
Ecology, NWRO
15700 Dayton Avenue North
(206) 496-7007
brett.carp@ecy.wa.gov

The project coordinator for King County is:

Jeff Stern
King County
201 S. Jackson St KSC-NR-0512
(206) 477-5479
jeff.stern@kingcounty.gov

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and King County, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

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

8.3 Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

King County shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s), subcontractor(s), and other key personnel to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

8.4 Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that King County 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 Order; reviewing King County's progress in carrying out the terms of this Order; 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 Order; and verifying the data submitted to Ecology by King County. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by King County unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

King County shall make best efforts to secure access rights for those properties within the Site not owned or controlled by King County where remedial activities or investigations will be performed pursuant to this Order. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of King County would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If King County is unable to accomplish what is required through "best efforts" in a timely enough fashion for any work required by this Order to proceed as scheduled, they shall notify Ecology, and include a description of the steps taken to comply with the requirements. If Ecology deems it appropriate, it may assist King County, or take independent action, in obtaining such access and/or use restrictions. Ecology reserves the right to seek payment from King County for all costs, including cost of attorneys' time, incurred by Ecology in obtaining such access or agreements to restrict land, water, or other resource use.

8.5 Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, King County shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section 7 (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, King County shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by King County pursuant to implementation of this Order. King County shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow King County and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section 8.4 (Access), Ecology shall notify King County prior to any sample collection activity unless an emergency prevents such notice.

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

8.6 Public Participation

Ecology shall maintain the responsibility for public participation at the Site. However, King County shall cooperate with Ecology, and shall:

- 8.6.1 If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.
- 8.6.2 Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify King County prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by King County that do not receive prior Ecology approval, King County shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.
- 8.6.3 When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through

attendance at public meetings to assist in answering questions or as a presenter.

8.6.4 When requested by Ecology, arrange and maintain a repository to be located at:

- a. Seattle Public Library
Central Library
100 Fourth Avenue, Seattle, WA 98104
- b. Ecology's Northwest Regional Office
Central File Room
15700 Dayton Avenue North, Shoreline, WA 98133

Call for an appointment:

Michael Hart

Phone: (206) 594-0016

Email: nwro_public_request@ecy.wa.gov

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Northwest Regional Office in Shoreline, Washington.

8.7 Access to Information

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

Nothing in this Order is intended to waive any right King County may have under applicable law to limit disclosure of Records protected by the attorney work-product privilege and/or the attorney-client privilege. If King County withholds any requested Records based on an assertion of privilege, King County shall provide Ecology with a

privilege log specifying the Records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged, including: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, biological, or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Order.

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

8.8 Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of the work performed pursuant to this Order, King County shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors.

8.9 Resolution of Disputes

8.9.1 In the event that King County elects to invoke dispute resolution King County must utilize the procedure set forth below.

8.9.1.1 Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), King County has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

8.9.1.2 The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The Parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those fourteen (14) calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; King County's position with regards to the dispute;

Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

8.9.1.3 King County may then request regional management review of the dispute. King County must submit this request (Formal Dispute Notice) in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; King County's position with respect to the dispute; and the information relied upon to support its position.

8.9.1.4 The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

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

8.9.3 Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

8.9.4 In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section 7.1 (Work to be Performed) or initiating enforcement under Section 10 (Enforcement).

8.10 Extension of Schedule

8.10.1 King County's request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is

requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

8.10.1.1 The deadline that is sought to be extended.

8.10.1.2 The length of the extension sought.

8.10.1.3 The reason(s) for the extension.

8.10.1.4 Any related deadline or schedule that would be affected if the extension were granted.

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

8.10.2.1 Circumstances beyond the reasonable control and despite the due diligence of King County including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by King County.

8.10.2.2 A shelter in place or work stoppage mandated by state or local government order due to public health and safety emergencies.

8.10.2.3 Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.

8.10.2.4 Endangerment as described in Section 8.12 (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of King County.

8.10.3 Ecology shall act upon any King County written request for extension in a timely fashion. Ecology shall give King County written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial

change, it shall not be necessary to amend this Order pursuant to Section 8.11 (Amendment of Order) when a schedule extension is granted.

8.10.4 At King County's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

8.10.4.1 Delays in the issuance of a necessary permit which was applied for in a timely manner.

8.10.4.2 Other circumstances deemed exceptional or extraordinary by Ecology.

8.10.4.3 Endangerment as described in Section 8.12 (Endangerment).

8.11 Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section 8.13 (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and King County. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, King County shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section 8.9 (Resolution of Disputes).

8.12 Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct King County to cease such activities for such period of time as it deems necessary to abate the danger. King County shall immediately comply with such direction.

In the event King County determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, King County may cease such activities. King County shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, King County shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with King County's cessation of activities, it may direct King County to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, King County's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section 8.10 (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

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

8.13 Reservation of Rights

This Order is not a settlement under RCW 70A.305. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against King County to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against King County regarding remedial actions required by this Order, provided King County complies with this Order.

Ecology nevertheless reserves its rights under RCW70A.305, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, King County does not admit to any liability for the Site. Although King County is committing to conducting the work required by this Order under the terms of this Order, King County expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

8.14 Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by King County without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to King County's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, King County shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, King County shall notify Ecology of said transfer. Upon transfer of any interest, King County shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

8.15 Compliance with Applicable Laws

8.15.1 **Applicable laws.** All actions carried out by King County pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70A.305.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. King County has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or King County, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and King County must implement those requirements.

8.15.2 **Relevant and Appropriate Requirements.** All actions carried out by King County pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or King County, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and King County must implement those requirements.

8.15.3 Pursuant to RCW 70A.305.090(1), King County may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and

90.58 and of any laws requiring or authorizing local government permits or approvals. However, King County shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

8.15.4 King County has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or King County determines that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other Party of its determination. Ecology shall determine whether Ecology or King County shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, King County shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by King County and on how King County must meet those requirements. Ecology shall inform King County in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. King County shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and King County shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

8.16 Indemnification

King County agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising

from or on account of acts or omissions of King County, its officers, employees, agents, or contractors in entering into and implementing this Order. However, King County shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

9. Satisfaction of Order

The provisions of this Order shall be deemed satisfied upon King County's receipt of written notification from Ecology that King County has completed the remedial activity required by this Order, as amended by any modifications, and that King County has complied with all other provisions of this Agreed Order.

10. Enforcement

Pursuant to RCW 70A.305.050, this Order may be enforced as follows:

- 10.1 The Attorney General may bring an action to enforce this Order in a state or federal court.
- 10.2 The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- 10.3 A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:
 - 10.3.1 Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.
 - 10.3.2 Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.
- 10.4 This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70A.305.070.

Effective date of this Order: _____

King County
Department of Natural Resources
Wastewater Treatment Division

Signed by:


6F7ECDE169354C2...
Kamuron Gurol

Division Director
King Street Center
(206) 263-5767

State of Washington
Department of Ecology

Kimberly Wooten
Section Manager
Toxics Cleanup Program
Northwest Regional Office
(425) 324-1658

EXHIBIT A Denny Way CSO Approximate Location Diagram

Jun 22, 2008 10:30am cdavidson K:\Jobs\020067-KING_CO_SED_MANA\02006701-107.dwg FIG 1

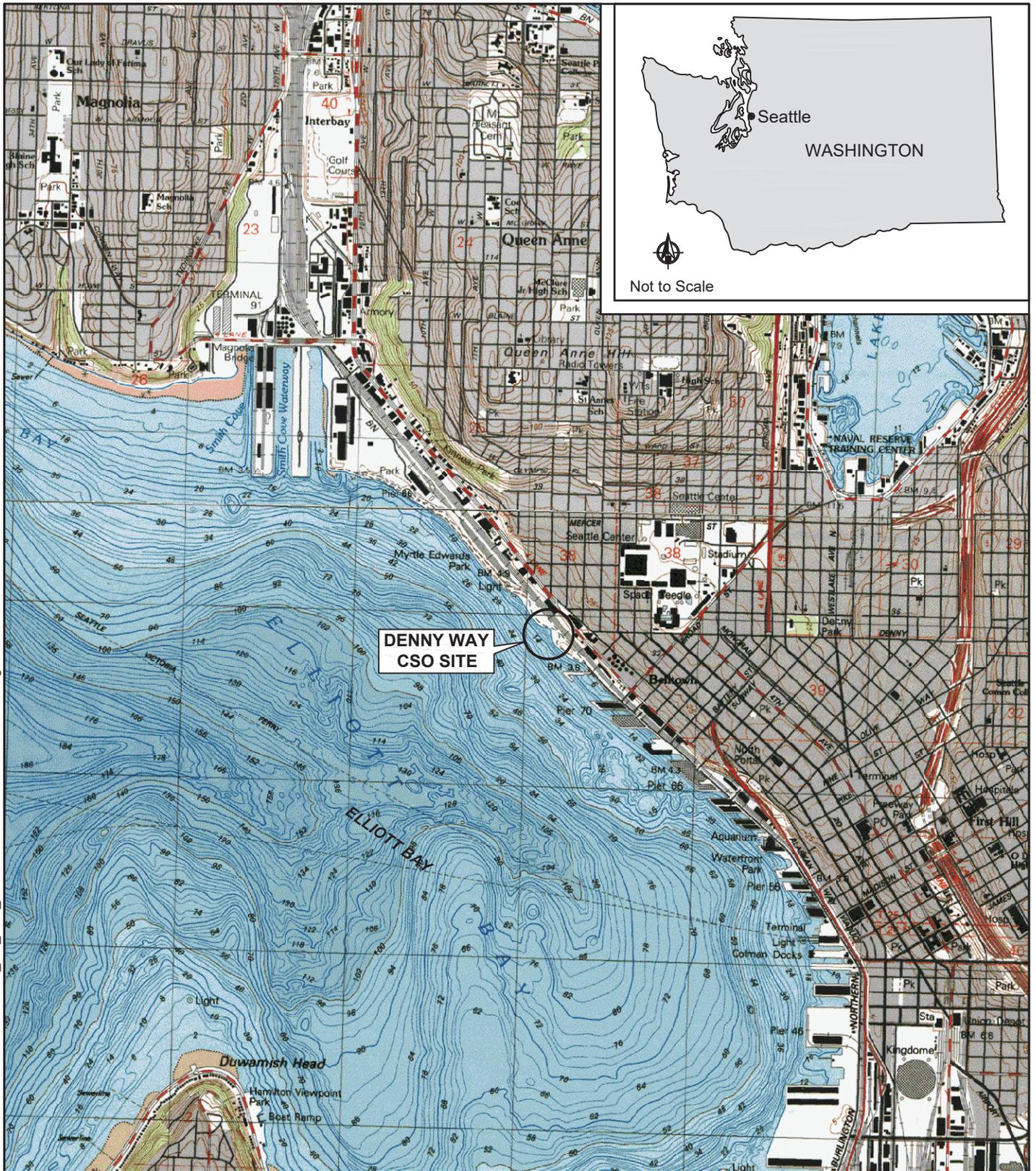


Figure 1

Exhibit A, Denny Way CSO Approximate Location
Denny Way CSO Nearshore Interim Sediment Clean-up Project



EXHIBIT B Work Plan

EXHIBIT B – WORK PLAN

PURPOSE

The Washington State Department of Ecology (Ecology) and King County Department of Natural Resources and Parks (King County) have the mutual objective of expediting and completing the cleanup of the Denny Way Combined Sewer Overflow Site (Denny Way Site) within inner Elliott Bay (Exhibit A). The work under this Agreed Order (AO) requires King County to perform a remedial investigation (RI) and feasibility study (FS) providing sufficient data, analysis, and evaluation to enable Ecology to select the final cleanup remedy for the Denny Way Site in a draft Cleanup Action Plan (DCAP). Work under this AO may also require King County to conduct an interim action if required or agreed to by Ecology.

This Scope of Work (SOW) summarizes the background of the Denny Way Site and describes five AO tasks to be performed by King County in coordination with Ecology:

- Task 1. Draft Remedial Investigation Report
- Task 2. Supplemental Remedial Investigation Data Collection (if required)
- Task 3. Interim Action (if required)
- Task 4. Final Remedial Investigation/Feasibility Study Report
- Task 5. Preliminary Draft Cleanup Action Plan

Background

The Denny Way Site consists of sediments within approximately 800 feet of former City of Seattle raw sewage and King County combined sewer overflow (CSO) outfalls at Myrtle Edwards Park that may have been affected by historical wastewater releases (Exhibit A). As summarized in the following sections, for more than 50 years King County has implemented progressive source controls of wastewater and CSO discharges and has completed two interim sediment cleanup actions. Concurrent with these actions, King County has performed detailed sediment quality investigations within the Denny Way Site over the last 35 years.

Source Controls

Seattle was incorporated by the territorial legislature in 1865 when its population was approximately 300. To manage waste generated by the growing population of Seattle, a board of public works undertook construction of the first sewers. These sewers were wooden troughs or boxes that carried wastes to the most convenient waterbodies—Elliott Bay and Lake Union. Organized planning and construction of sewers began in 1875, and the first permanent sewer to Elliott Bay was constructed in 1882. In 1895, problems with sewage in Lake Union and sewage overflowing in streets during rainstorms prompted construction of diversion lines from an approximate 2,000-acre catchment area

in the Lake Union and Denny Way areas, routing raw sewage and stormwater flows from these relatively large areas to an intertidal discharge outfall at Denny Way (Exhibit A). This outfall continued to discharge relatively large volumes of raw sewage and stormwater for the next 60 to 70 years (discharge volumes were not measured, but likely exceeded several billion gallons per year).

Mounting concerns over high fecal bacteria levels in Elliott Bay and even greater bacteria and nutrient problems in Lake Washington led to major construction projects that eventually eliminated all continuous untreated wastewater flows to Elliott Bay. In the 1960s, the Municipality of Metropolitan Seattle (Metro; now merged with King County) built much of the present system of interceptors and treatment plants that collect, transport, and treat wastewater in the greater Seattle area. These projects progressively reduced wastewater and stormwater discharges to the Denny Way SCU. Seattle's raw sewage outfall at Denny Way was acquired by Metro in 1962 and intercepted for treatment at West Point in 1967. A CSO, the relief point where the combined sewer basin connects to the interceptor, was constructed at the location of the previous raw sewage outfall. In 1969, Metro also implemented the first industrial waste program in the nation to ensure wastewater generated by industries was treated to protect plant operations and personnel, requiring many to pretreat before discharging to sewers.

Beginning in the 1970s, Metro further reduced CSO discharge volumes through a variety of means, including use of a computer-augmented treatment and disposal system that maximized inline storage and regulated where overflows occur. However, the largest and most frequent overflow site to Elliott Bay has been at the Denny Way CSO outfall (Exhibit A).

In the early 1980s, the Denny Way CSO averaged 32 overflow events annually that produced an average annual volume of approximately 500 million gallons per year. In 1986, Metro adopted a new Facilities Plan to expand secondary treatment and further reduce CSO discharge volumes. Also in 1986, Metro began a trial program to identify and further reduce toxicant inputs to the sewer system discharging through the Denny Way CSO (Romberg et al. 1987). The resultant expanded industrial pre-treatment program further reduced chemical concentrations in the wastewater system and continues to be highly effective.

In the early 2000s, a joint effort between King County and Seattle Public Utilities to further control CSO discharges resulted in construction of two new outfalls in the Denny Way CSO area. Treated discharges from King County's Elliott West Wet Weather Treatment Facility are now routed through a 7.5-foot-diameter, 490-foot-length outfall to a depth of approximately -60 to -70 feet mean lower low water (MLLW; depicted in Exhibit A). The outfall was constructed in 2002, and the storage and treatment facility came online in 2005. Treated discharge from this outfall occurs intermittently (roughly eight times per year), with volumes averaging approximately 70 to 200 million gallons per year from 2005 through 2020. In addition, a 100-foot extension of the previous outfall to a depth of approximately -20 feet MLLW was constructed in 2002 as an overflow for the treatment facility when

its capacity is exceeded and overflow for a separate, relatively small, combined basin. The overflow discharges untreated CSO effluent to Elliott Bay an average of once per year when flows exceed system capacity. Untreated CSO discharge volumes currently average approximately 0 to 14 million gallons per year.

Prior Interim Sediment Cleanup Actions

In 1990 under an informal cleanup process, the U.S. Army Corps of Engineers (Corps) and King County sponsored the Denny Way CSO capping project to test the feasibility of capping contaminated sediments in Elliott Bay with suitable navigation dredged material. A 3-foot layer of graded sand, dredged from the Upper Turning Basin of the Duwamish Waterway during routine navigation channel maintenance, was beneficially reused by placing these materials over a 3-acre area in water depths ranging from approximately -30 to -60 feet MLLW (sediment management area [SMA] 2, depicted in Exhibit A). Construction of the cap was performed by the Corps by controlling the release of the sand using specially equipped bottom dump barges and accompanying tugs (Sumeri and Romberg 1991).

During the next 10 years, King County monitored the effectiveness of the placed cap (King County 2005). Monitoring data demonstrated that the cap remained stable and successfully isolated underlying contaminated sediments. However, chemical concentrations on the cap surface layer (offshore of the Denny Way CSO) increased after cap construction, likely due to redistribution of contaminated sediments present in adjacent shallow subtidal slope areas along the inshore edge of the cap.

To further accelerate cleanup of the Denny Way area and minimize the risk of future recontamination, in 2007 Ecology and King County entered into Agreed Order DE 5068 to perform interim sediment cleanup actions in nearshore areas upslope of the cap (SMA 1 as depicted in Exhibit A; Anchor 2007, 2008). Sediments targeted for dredging included deposits that could pose a risk of recontamination. Once flows were directed to the new outfalls in 2005 and the old Denny Way shoreline outfall was decommissioned and subsequently removed, the interim action was constructed. The project was completed in 2008 and included mechanical dredging and off-site landfill disposal of approximately 14,000 cubic yards of contaminated sediments from side slopes ranging in depth from approximately +10 feet to -35 feet MLLW within a 1.2-acre area. The dredged area was backfilled and armored with an average thickness of more than 8 feet of material, including well-graded sand, sandy-gravel habitat mix, cobbles, and boulders, all from clean upland quarry sources. In addition, an approximate 6-inch-thick layer of well-graded, clean sand was placed around the perimeter of the dredge prism to control dredge residuals.

The 2007 Agreed Order and permit conditions for the 2005 outfall construction project required King County to perform detailed surface sediment monitoring of the Denny Way CSO area from

2006 through 2025 (NMFS 2000; King County 2008, 2018). The monitoring data collected to date have tracked surface sediment quality of unremediated offshore areas beyond the limits of the current cap (the Offshore Perimeter Area), in addition to the inshore backfill/sand cover areas. The most recent sediment monitoring event occurred in 2021, including 16 stations within the Denny Way Site (King County 2022, unpublished data).

Regulatory Framework

The Denny Way SCU encompasses property owned by the State of Washington and managed by the Washington State Department of Natural Resources (DNR). DNR has provided King County an easement along a portion of state-owned aquatic lands for the placement and operation of the Denny Way CSO outfall (Exhibit A).

Operation of the Denny Way CSO outfall is regulated by Ecology under King County's National Pollutant Discharge Elimination System (NPDES) permit for the West Point Treatment Plant (WA0029181). The most recent NPDES permit for the West Point Treatment Plant became effective in February 2015. In addition, a 2013 Consent Decree (Civil Action No. 2:13-cv-677) between the U.S. Department of Justice, the U.S. Environmental Protection Agency (EPA), Ecology, and King County requires additional CSO control efforts (King County 2019).

The Sediment Management Standards (SMS; Chapter 173-204 Washington Administrative Code [WAC]) and the Model Toxics Control Act (MTCA; Chapter 173-340 WAC) recognize that, in urban areas such as inner Elliott Bay, sediment contamination from a variety of different sites and sources can become commingled, potentially creating a larger sediment site. In such areas, a SCU associated with an individual source may be established (see WAC 173-204-500[4] and 505[20]). SCUs within a larger site can be proposed by potentially liable parties interested in cleaning up a focused area within a larger site.

At the Denny Way Site a SCU will be considered during development of the RI for those sediments within approximately 800 feet of former City of Seattle and King County CSO outfalls at Myrtle Edwards Park that may have been affected by historical wastewater releases (Exhibit A). Based on modeling and geostatistical analyses, the 800-foot radius is the maximum anticipated far-field influence of wastewater discharges from these historical outfalls and is consistent with the outer boundary of the Denny Way Long-Term Sediment Monitoring Program, which was developed and implemented to monitor potential depositional effects from the new outfall configuration (NMFS 2000; King County 2008). Beyond a distance of approximately 800 feet from the former outfall, surface sediment concentrations are likely primarily attributable to diffuse, comingled regional releases throughout inner Elliott Bay.

Previous Investigations

As a result of the previous source control and interim sediment cleanup actions summarized above, over the last 35 years King County has performed detailed sediment quality investigations within and around the Denny Way Site, providing data to inform the RI:

- 1987 Denny Way CSO toxicant reduction study (Romberg et al. 1987)
- 1995 Elliott Bay Duwamish restoration program recontamination study (EBDRP 1995)
- 1996 Denny Way sediment cap monitoring (Romberg and Wilson 1999)
- 1997 Denny Way sediment characterization (Black & Veatch and Striplin 1998)
- 2000 Denny Way sediment cap monitoring (King County 2005)
- 2001 Denny Way pre-construction sediment characterization study (King County 2001)
- 2003 to 2015 Denny Way outfall sediment monitoring (King County 2008, 2009, and 2018)
- 2007 Denny Way pre-remedial design sediment sampling and analysis (Anchor 2007)
- 2020 Denny Way dioxin/furans and PCB congener sediment characterization (King County 2020)
- 2021 Denny Way outfall sediment monitoring (King County 2021)

Sediment investigation data have also been collected by Ecology and others in inner Elliott Bay beyond the Denny Way Site, including recurring ambient monitoring. Although historical information will be included in the RI, more recent sediment sampling data collected since 2012 will be used to characterize current environmental conditions within the Denny Way Site, consistent with SMS guidance (Ecology 2021).

Task 1. Remedial Investigation Report

Using existing sediment investigation data as generally summarized above, King County will prepare an RI report that meets the requirements of WAC 173-204-550 and WAC 173-340-350. The RI will characterize the nature and extent of sediment contamination exceeding preliminary SMS cleanup standards and other regulatory requirements. The RI will include the following:

- Definition of and general conditions within the Denny Way Site
- Nature and extent of sediment chemicals of concern
- Sediment transport mechanisms
- Confirmed and suspected contaminant sources
- Recontamination potential
- Natural resources and habitat
- Screening-level human health and ecological risk assessments
- Preliminary sediment cleanup standards
- Sediment management areas
- Remedial investigation data gaps (if any)

The County will submit an Agency Review draft RI Report, a Revised Agency Review Draft RI Report (if applicable), a Public Review Draft RI Report, and a Final RI Report to Ecology as detailed in the Order and schedule (Exhibit C).

Task 2. Supplemental Remedial Investigation Data Collection (if required)

If the draft RI (Task 1) concludes that additional data are needed to characterize the nature and extent of sediment contamination within the Denny Way Site to meet SMS and MTCA requirements, King County will prepare a supplemental RI work plan to fill remaining data gaps. The work plan will identify data collection procedures, address potential cultural and historical resources (including an inadvertent discovery plan), and include a sampling and quality assurance project plan. King County will implement the supplemental RI data collection consistent with the Ecology-approved work plan.

Task 3. Interim Action (if required)

An interim action is a remedial action partially addressing the cleanup of a site, as provided under MTCA and the AO. It is anticipated that the draft RI (Task 1) will provide information to inform design of additional interim cleanup elements beyond those implemented to date to ensure human health and environmental protection in a defined Denny Way SCU.

If required or agreed to by Ecology, King County will prepare an Interim Action Plan for the Denny Way SCU. The Interim Action Plan will describe the proposed interim action and functional requirements that the interim action must meet. The interim cleanup action shall not foreclose reasonable alternatives for the final cleanup action in the Denny Way SCU and shall meet the minimum requirements found in WAC 173-204-570(3). The Interim Action Plan will include the following:

- Denny Way SCU environmental conditions
 - Summary of sediment sampling data
 - Conceptual site model
- Cleanup requirements
 - Preliminary sediment cleanup standards
 - Points of compliance
 - Sediment management areas
 - Compliance with applicable laws
 - State Environmental Policy Act
 - Exemptions from procedural requirements
- Interim action alternatives and comparative evaluation
 - Cleanup technologies
 - Design evaluations

- Interim action alternatives
- Detailed analysis of alternatives
- Recommended interim action
- Interim action implementation plan and schedule
- Interim action compliance monitoring

King County will implement the interim action consistent with the Ecology-approved plan.

Task 4. Feasibility Study Report

Following Ecology approval of the Public Review Draft RI Report (Task 1), including supplemental RI data collection (Task 2; if required), following post-construction monitoring for any interim action implemented, and after Ecology develops regional background levels for chemicals of concern within inner Elliott Bay in accordance with WAC 173-204-560(5), King County will prepare a Feasibility Study (FS) Report that meets the requirements of WAC 173-340-351 and WAC 173-204-550 for the Site or the approved SCU defined in the RI. The FS will include an evaluation of alternative cleanup actions that protect human health and the environment by eliminating, reducing, or otherwise controlling risks posed through each exposure pathway and migration route of concern identified in the RI. The number and types of alternatives to be evaluated will consider the characteristics and complexity of the Denny Way Site, as well as cost, technical feasibility, and net environmental impact.

The FS will also include a MTCA disproportionate cost analysis (DCA) consistent with WAC 173-204-570(4) and WAC 173-340-360(3)(e) to evaluate which of the alternatives evaluated are protective to the maximum extent practicable. This analysis will involve comparing the costs and benefits of alternatives whose incremental costs are not disproportionate to the incremental benefits.

The County will submit an Agency Review draft FS Report, a Public Review Draft FS Report, and a Final FS Report to Ecology as detailed in the Order and schedule (Exhibit C).

Task 5. Preliminary Draft Cleanup Action Plan

Based on the findings in the final RI/FS, King County will prepare a preliminary DCAP for Ecology's consideration in accordance with WAC 173-340-380 (pursuant to WAC 173-204-575(2)) for the Site or the approved SCU defined in the RI. The preliminary DCAP will include:

- Description of the final cleanup action
- Summary of the rationale for selecting the final cleanup action
- Summary of other alternatives evaluated in the RI/FS
- Cleanup standards for the Denny Way Site or the approved SCU defined in the RI
- Institutional controls required as part of the final cleanup action
- Applicable state and federal laws for the final cleanup action

- Description of the types, levels, and amounts of hazardous substances that will remain in the Denny Way Site or the approved SCU defined in the RI and measures that will be used to ensure long-term protectiveness
- Consideration of recontamination under WAC 173-204-500(4)(b)

After making revisions based on Ecology's comments on the Preliminary DCAP, King County will submit a Revised Preliminary DCAP. Preparation of a final DCAP is not a part of the AO. Ecology will issue the final DCAP and provides public notice and opportunity for comment. Ecology will then issue a final Cleanup Action Plan (CAP) after review and consideration of the public comments received in accordance with WAC 173-340-380(2) and (3). The final CAP will be implemented pursuant to a subsequent agreed order, amendment, or consent decree.

References

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EXHIBIT C Schedule of Deliverables

EXHIBIT C: SCHEDULE OF DELIVERABLES	
Deliverable	Due Date
Monthly Progress Reports	Due on the 15 th each month, beginning after the first full month following the effective date of this Order
REMEDIAL INVESTIGATION REPORT	
<i>Initial Outline for Agency Review Draft Remedial Investigation Report</i>	15 days after Ecology’s request.
<i>Annotated Outline for Agency Review Draft Remedial Investigation Report including all tables and graphics</i>	15 days after receipt of Ecology’s edits and comments pertaining to the initial outline.
<i>Agency Review Draft Remedial Investigation Report</i>	60 days after receipt of Ecology’s edits and comments pertaining to the annotated outline.
<i>Public Review Draft Remedial Investigation Report</i>	30 days after receipt of Ecology edits and comments pertaining to the Agency Draft.
<i>Final Remedial Investigation Report</i>	30 days following completion of the required public comment period.
INTERIM ACTION PLAN, if applicable	
Agency Review Draft Interim Action Plan (if applicable)	30 days following submittal of the RI Data Memorandum
Public Review Interim Action Plan (if applicable)	30 days following receipt of Ecology comments on the Agency Review Draft Interim Action Plan
Final Interim Action Plan (if applicable)	30 days following completion of the required public comment period
FEASIBILITY STUDY	
<i>Initial Outline for Agency Review Feasibility Study</i>	15 days after completion of the required RI Report public comment period.
<i>Annotated Outline for Agency Review Feasibility Study including all tables and graphics and disproportionate cost analysis</i>	15 days after receipt of Ecology’s edits and comments pertaining to the initial outline.
<i>Agency Review Feasibility Study</i>	60 days after receipt of Ecology’s edits and comments pertaining to the annotated outline and following interim action (implemented as described above) post construction monitoring.
<i>Public Review Draft Feasibility Study</i>	30 days after receipt of Ecology edits and comments pertaining to the Agency Draft.

<i>Final Feasibility Study</i>	30 days following completion of the required public comment period.
DRAFT CLEANUP ACTION PLAN	
<i>Initial Outline for Draft Cleanup Action Plan</i>	15 days after completion of the required Feasibility Study public comment period.
<i>Annotated Outline for Agency Review Draft Cleanup Action Plan including all tables and graphics</i>	15 days after receiving Ecology's edits and comments pertaining to the initial outline.
<i>Agency Review Draft Cleanup Action Plan</i>	60 days after receiving Ecology's edits and comments pertaining to the annotated outline.
<i>Public Review Draft Cleanup Action Plan</i>	30 days after receiving Ecology edits and comments pertaining to the Agency Draft. Public review of Draft Cleanup Action Plan will be conducted under a subsequent Agreed Order.