Focus Puget Sound

DEPARTMENT OF ECOLOGY
State of Washington

Summary Response to Public Comment on:

Proposed Consent Decree (Decree) including the

Draft Cleanup Action Plan (DCAP)

Draft State Environmental Policy Act (SEPA) Mitigated Determination of Non-Significance (MDNS) and Checklist
And on the draft Public Participation Plan

Port Gamble Bay

Kitsap County, WA

Puget Sound Initiative:
Reaching the goal of a healthy, Sustainable Puget Sound

December 2013

Focus
Puget Sound

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Puget Sound Initiative

Protecting and Restoring Puget Sound

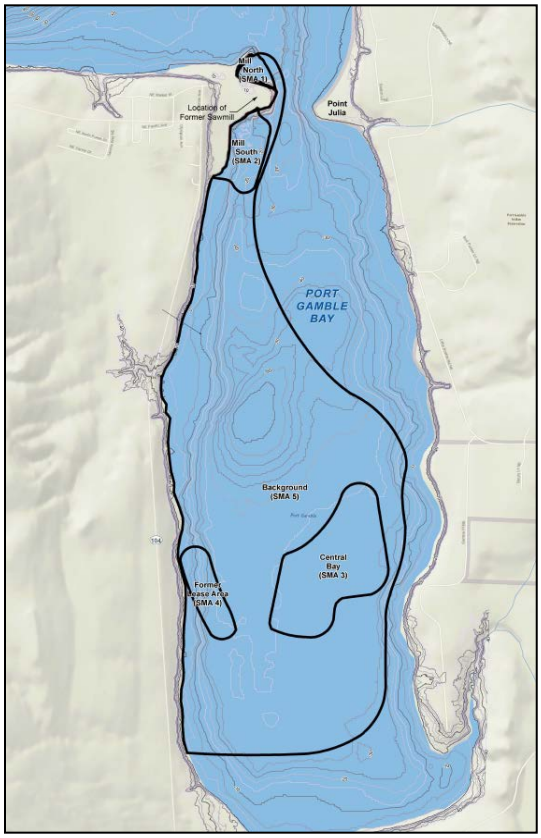
The Puget Sound Initiative, established by the Washington state Legislature, is a collaborative effort between local, tribal, state and federal governments, business, agricultural and environmental interests, and the public to restore and protect the Sound.

Contaminated sites around the shorelines are a leading source of pollution to the Sound. Ecology has accelerated its efforts to clean and restore these contaminated sites within identified priority bays. Within these bays, Ecology is cleaning up 50-60 sites within one-half mile of the Sound. Cleanup actions will help to reduce pollution and restore habitat and shorelines in Puget Sound, resulting in larger areas of usable shoreline habitat for fish, wildlife, and people.

Ecology is taking a baywide, rather than a site-specific, approach to cleaning up numerous sites within a geographic area. In Port Gamble, local, state and federal agencies, local Native American tribes, businesses and property owners are working to restore the waterfront – cleaning up several old industrial sites and restoring waterfront areas for fish, animals and people. This unique, baywide collaboration means more cleanups and restoration are happening faster. Important waterfront uses – shipbuilding, marinas, parks, recreation, housing, fishing, cultural uses and others – can thrive in a revitalized and healthy waterfront environment

This comment response document addresses cleanup of Port Gamble Bay and the five Sedminent Management Areas (see map at right).

For more information about the Port Gamble Bay and Mill Site visit https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=3444



Port Gamble Bay and Mill Site

Site Background and Cleanup Status

Background

The Port Gamble Bay and Mill Site (Site) consists of part of Port Gamble Bay (the Property), the former sawmill area and the uplands areas to the west and south of the former sawmill area. The Property was used by Pope & Talbot, Inc. and its predecessors to transfer and raft logs used in the manufacturing of forest products for 142 years, from 1853 to 1995. In 1985, Pope & Talbot, Inc., transferred ownership of the sawmill, uplands and adjacent tidelands to Pope Resources. Under a lease with Pope Resources, Pope & Talbot continued manufacturing wood products at the Site until 1995. The Property includes the portions of the Bay shown in the figure on page 2. Ecology has worked with Pope Resources to develop documents that describe the cleanup to be performed at the Property.

Sawmill

The Site is located at the mouth of Port Gamble Bay, on the east end of NE View Drive, in Port Gamble, Kitsap County, WA. The mill was removed in 1997 and was leased for log sorting, wood chipping, materials handling, and marine research. Historical operations at the mill released pollutants, including cadmium, petroleum hydrocarbons, carcinogenic polycyclic aromatic hydrocarbons (cPAHs), and dioxins/furans. Some of these contaminants have been found in soil surrounding the mill and sediments at the Property. In addition to the chemicals released, impacts from wood waste to the marine sediments have been found. When wood waste breaks down, it releases sulfide and ammonia, which are harmful to animals in the mud. In addition, wood waste can cause impacts to sediment by smothering aquatic habitat and animals, such as clams. Other chemicals that may accumulate in shellfish tissues are present in low concentrations throughout the Bay, and include arsenic, cadmium, carcinogenic PAHs and dioxins/furans.

Former Lease Area

The Former Lease Area is a part of the Property and is located at the southwest end of the Bay. This area was leased to Pope & Talbot, Inc. by the Washington Department of Natural Resources from 1974 to 1995. During that time, the log transfer and rafting activities conducted on the Property deposited wood waste on the bed of Port Gamble Bay. Ecology has investigated wood waste impacts from historical log handling operations throughout the Bay.

Cleanup Status

Ecology and Potentially Liable Persons (PLPs) - Pope Resources LP and Olympic Property Group LLC – are negotiating an agreement to clean up and restore Port Gamble Bay (the Property), which is the in-

water portion of the Site. Information from the final Partial RI/FS was used to develop the DCAP in 2013. The DCAP recommends cleanup actions for the five Sediment Management Areas (SMAs) at the Property.

October 11 – November 12, 2013 – A public comment period was held for the proposed Consent Decree (Decree), Draft Cleanup Action Plan (DCAP), draft State Environmental Policy Act (SEPA) Mitigated Determination of Non-Significance (MDNS) and checklist, and draft Public Participation Plan (PPP).

What's next?

After the remedial action is selected and confirmed in the Decree, documents detailing how construction will take place are prepared and documented in a report called an EDR. The EDR contains very specific performance criteria that must be met during and after construction of the remedial action. The EDR also includes a backup plan in case the cleanup action does not work or cannot be implemented as anticipated. Once planning is completed, construction can begin.

According to the DCAP, this includes:

- Remove creosoted pilings and overwater structures.
- Excavate contaminated intertidal sediments.
- Dredge wood waste.
- Place sand caps one to four feet in depth.
- Implement enhanced monitored natural recovery (EMNR).
- Conduct long term monitoring.

Proposed Cleanup

Proposed Cleanup

The following documents have been issued for the Site and describe the anticipated cleanup actions for Port Gamble Bay.

Overview of the Proposed Consent Decree
In the proposed Decree, a formal legal document, Ecology and the PLPs - Pope Resources LP and Olympic Property Group LLC - agree upon the cleanup actions needed to protect human health and the environment. The proposed Decree requires the PLPs to carry out specific cleanup actions. A DCAP is among the exhibits to the Decree.

Overview of the Draft Cleanup Action Plan
This DCAP describes the selected cleanup action for a portion of the Site. Specifically, this DCAP selects a cleanup action for the Property.

This DCAP uses information from the 2012 Partial Remedial Investigation and Feasibility Study report (PRI/FS) to identify a preferred cleanup action and a schedule to remediate contamination at the Property. After the PRI/FS was completed in 2012 the PLPs prepared a DCAP under Ecology oversight. The DCAP recommends the following cleanup actions for its Sediment Management Areas (SMAs):

Sediment Management Areas
SMA-1 (North Mill):

- Dredging and capping.
- Removing creosoted pilings and overwater structures as a source control measure and to allow excavation of contaminated sediments.
- Removing approximately 5,000 cubic yards (cy) of contaminated intertidal sediments and 10,000 to 15,000 cy of wood waste.
- Long-term sediment monitoring.

SMA-2 (South Mill):

- A combination of dredging, capping and enhanced monitored natural recovery (EMNR).
- Removing creosoted pilings and overwater structures as a source control measure and to allow excavation of contaminated sediments.
- Excavating approximately 9,000 cy of contaminated intertidal sediments and 20,000 to 30,000 cy of wood waste.
- Capping non-dredged areas with clean sand and use of institutional controls.
- Long-term sediment monitoring.

SMA-3 (Central Bay):

- Conducting EMNR by placing 90,000 to 100,000 tons of clean sand.
- Long-term monitoring.

SMA-4 (Former Lease Area):

- Removing creosoted pilings.
- Conducting EMNR by placing 20,000 to 25,000 tons of clean sand.
- Long-term monitoring.

SMA-5 (cPAH Background Area):
This SMA surrounds and includes all of the other SMAs, serving as the boundary for remedial action in the sediments. Creosoted pilings will be removed to control sources of contaminants and monitored natural recovery will be used to confirm recovery of sediments over a set period of time.

Land Acquisition and Future Use
Separate from the cleanup work planned for the Property, Ecology received funds appropriated by the Legislature for source control, habitat preservation, and cleanup sustainability. These funds will be used to purchase land for conservation and to conduct other environmental restoration and preservation projects. Funding decisions are being made through a separate process. These decisions were not a subject of this comment period.

Overview of the Draft SEPA Mitigated Determination of Non-Significance and Checklist
SEPA makes sure that environmental values are considered during agency decision-making. A draft SEPA checklist was prepared to identify potential environmental impacts of the project on the surrounding environment. Ecology determined that use of best management practices and related measures to avoid, minimize and mitigate adverse impacts during the environmental cleanup of the Property will not result in a probable significant adverse impact on the environment (Mitigated Determination of Non-Significance). The checklist and determination were both available for public comment.

Introduction to Summary Response

A significant milestone was reached recently with the issuance of the following documents for cleanup of Port Gamble Bay:

- *Proposed Consent Decree (Decree)*
- *Draft Cleanup Action Plan (DCAP)*
- *Draft State Environmental Policy Act (SEPA) Mitigated Determination of Non-Significance (MDNS) and Checklist*
- *Draft Public Participation Plan*

These draft documents were issued for public comment on October 11, 2013 and the public comment period ran through November 12, 2013. During the public comment period, Ecology provided the following public involvement materials and opportunities:

1. Distributed a fact sheet describing the site and the documents through a mailing to addresses in the area and other interested parties.
2. Published a paid display ad in the *Kitsap Sun* and the *North Kitsap Herald.*
3. Published a notice in the Toxics Cleanup Program Site Register.
4. Published a notice in the Ecology Public Involvement Calendar.
5. Posted draft documents on the Ecology website.
6. Emailed notice of the upcoming comment period and the documents for review to the following tribes: Jamestown S'Klallam, Lower Elwha Klallam, Port Gamble S'Klallam, Skokomish and Suquamish.
7. Provided copies of the documents through information repositories at:
    - Ecology's Headquarters Office
    - Poulsbo Library.
    - Little Boston Library
    - Town of Port Gamble -Weddings & Events Office
8. Issued a press release on October 10, 2013.
9. Hosted an open house/public hearing on October 29, 2013 at the Hood Canal Vista Pavilion from 5:00 to 8:30 p.m.

This Response to Public Comment document provides information about the Port Gamble Bay and Mill Site and responds to public comments received during the public comment period. Ecology has reviewed and carefully considered all comments received on the draft documents, and determined that no significant changes to the other documents were needed, though numerous comments and opinions were noted. A public participation plan was prepared for this site and will be updated periodically to respond to requests by people interested in the cleanup of the site or as Ecology determines appropriate.

Comments and Responses

The comments received were reviewed and evaluated by the Ecology cleanup team. Comments were divided into three category types –Tribes, Public and Agency – and were responded to individually.

A total of 27 persons provided comments through letters, email messages and at the public hearing regarding the draft documents. In the comment table, each commenter is referenced by comment type and assigned a comment number.

List of Commenters:

Comment #	Name	Organization/Affiliation	Comment Type
1	Rory O'Rourke	Port Gamble S'Klallam Tribe	Tribes
1-A	Josh Wisiniewski	Port Gamble S'Klallam Tribe	Tribes
2	Ethel Branch	Kanji & Katzen PLLC, for Port Gamble S'Klallam Tribe	Tribes
3	Rory O'Rourke	Port Gamble S'Klallam Tribe	Tribes
4	Rory O'Rourke	Port Gamble S'Klallam Tribe	Tribes
5	Roma Call	Port Gamble S'Klallam Tribe	Tribes
6	Alison O'Sullivan	Suquamish Tribe	Tribes
7	Randy Harder	Executive Director, Point No Point Treaty Council; S'Klallam Tribe	Tribes
8	Bert Jackson	n/a	Public
9	Bruce McCain	Suquamish Resident	Public
10	Anonymous	n/a	Public
11	Colleen Almojuela	Member, Suquamish Nation; Adjuct Faculty, TESC and NWIC	Public
12	Dennis & Ingrid Hansen	Property owners, Lot 9 Gamble Bay	Public
13	Donna M. Simmons	Hood Canal Environmental Council (HCEC)	Public
14	Joyce Troyer Wilson	Student, Evergreen State College Reservation Based Community Determined Program	Public
15	Leroy P. Kriley	n/a	Public
16	Mark Barabasz	n/a	Public
17	Craig Jacobrown	Indianola Resident	Public
18	Connie Wellman	Kingston Resident	Public
19	Lena Tunkara	n/a	Public
20	John Willett	Past Vice President, North Kitsap Trails Association; Cofounder, Kitsap Forest and Bay Coalition	Public
21	Dave Teitzel	Kingston Resident	Public
22	Bruce McCain	Suquamish Resident	Public
23	John Kuntz	Owner, Olympic Outdoor Center	Public
24	Sam Berry	President/Owner, Redside Construction LLC	Public
25	Marilyn Bode	Resident	Public
26	Maurice Major	Cultural Resources Specialist, Washington Department of Natural Resources	Agency

Comment Responses

Comments are divided into three types:

1. Tribes
2. Public
3. Agency

Comment	Ecology's Response
Tribes *(This section includes comments # 1, 1A and 2 to 7)*	
Port Gamble S'Klallam Tribe	
Comment #1.1 **Areas of SMA-5 above cleanup levels need at least Enhanced Monitored Natural Recovery (EMNR) to be protective of human health.** The remedial alternatives evaluation matrix (Table 5-1) gives a higher score to EMNR than to Monitored Natural Recovery (MNR), even considering a flawed scoring system that gives a higher scoring of environment to MNR than EMNR. MNR for the central areas of the Bay with PAH contamination does not seem to be the most logical choice for net environmental benefit. MNR would leave concentrations well above human health risk-based concentrations for 20-25 years, and studies have shown toxic effects of PAHs on fish1 as well as humans, therefore the remedy does not seem appropriate for the use of the Site. Table 6-1 indicates that MNR is protective of the environment, and the Feasibility Study (p. 90) states that "the concentrations of chemicals in SMA-5 do not present a risk to the benthic community, and so this MNR is scored 5 for short-term environmental impact." However, there were Microtox bioassay failures in SMA-5, and according to the SMS, failure of the Microtox test indicates that "sediments are determined to have adverse effects on biological resources." Further evaluation of these test results was not conducted because the results did not show a correlation with wood waste. However, there are other toxic chemicals present in SMA-5, and these results cannot be discounted. Adjusted the scoring in Table 6-1 to reflect this would appear to make EMNR an even more favorable alternative. In Section 5.3.5, the detailed evaluation of SMA-5,	Ecology acknowledges the commenter's proposed active remediation of an additional 196 acres of SMA-5. Ecology's plan prioritizes active cleanup to accomplish the greatest reduction of impacts to the environment and human health while minimizing the effects of cleanup on natural resources and harvest activities. The plan targets the highest cPAH levels for active remediation (e.g., the 10 fold exceedance over background, nearest the former sawmill). A total of 121 acres of the 602 acre inwater site are scheduled for some measure of active remedy. The cleanup plan also includes active source control, including the removal of creosote pilings. This provides immediate reduction of risk in the most critical intertidal areas, and substantially reduces the area and levels of cPAHs remaining for natural recovery processes to address, including in SMA-5. Ecology evaluated addressing the area described here as a separate SMA for implementation of active remedy and risk reduction. Ecology determined the benefits were not commensurate with the adverse impacts of the additional inwater work. In Port Gamble Bay, the consumption of intertidal clams and oysters and subtidal geoduck results in the greatest risk to humans. The location discussed here is entirely subtidal, and so does not affect clams and oysters. It also lies outside the designated geoduck harvest area. We acknowledge that with MNR, Dungeness crab may still be affected within the timeframe for recovery. However, the cost of active remediation in this area was determined to be disproportionate to the benefit that would be gained. After eliminating the

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EMNR was given a higher ranking than MNR for protection of human health in both short-term and long-term effectiveness. However, MNR was selected as the preferred alternative. Therefore, Ecology is prioritizing the health of benthic organisms over human health, which the Tribe has opposed in previous comment submittals. EPA suggests that MNR "is not recommended for use where local cultures subsist on fish and shellfish because it is generally a slow process."2 Also, EPA suggests that MNR is especially conducive when "natural recovery processes have a reasonable degree of certainty to continue at rates that will contain, destroy, or reduce the bioavailability or toxicity of contaminants within an acceptable time frame" and "expected human exposure is low and/or reasonably controlled by institutional controls."3 None of these apply to SMA-5 in Port Gamble Bay since the expected restoration timeframe has not been sufficiently evaluated and the expected human exposure remains high due to subsistence activities.	majority of risk to human health by performing the 121 acres of remediation in the CAP, the additional 196 acres of remediation would achieve only about 30 percent reduction of the remaining risk. This represents a 160 percent increase in remediated area and an additional year of construction for a nominal decrease of the original risk. In addition, the adverse effects of disruption to the benthic environment and the disruption of tribal harvest that would occur with active remediation in this area outweigh the incremental benefit that would be gained through active remediation.
Researchers in Times Beach, Missouri, found that concentrations of dioxin/ furan compounds in surface and subsurface soil samples remained essentially unchanged in core samples collected over a span of four years.4 The majority of dioxins/furans in aquatic systems are found in the sediments, and their lipophilicity and low reactivity make them resistant to biotic degradation.5 As with soil, biotic degradation of dioxins/furans in sediments is not reported to be a significant method of dioxin/furan removal.	We are aware of and sensitive to community concerns about cleanup impacts on resource harvest activities and part of the ED phase will include looking at ways to avoid or minimize those impacts. We have actively worked with the Port Gamble S'Klallam Tribe to understand the concerns and interests of the tribe and have tried to accurately incorporate consideration of these concerns into the cleanup plans. Ecology will continue to engage with tribes on these concerns.
Ecology's justification for selecting MNR over active remedies is that the costs exceed the minimal additional benefit (FS, Section 6.2.5.9). According to the revised Sediment Management Standards, a technical practicability evaluation is to be performed when no alternative can reasonably achieve the site-specific cleanup standards within the 10-year time frame. However, the Technical Practicability Evaluation for Background Area (SMA-5) does not evaluate whether the active remedies can achieve the	Following the active remediation described in the CAP, risk to human health will be lower than the risk associated with natural background concentrations.

Comment	Ecology's Response
cleanup standards within the 10-year timeframe. In fact, Ecology "did not put additional effort into further characterizing these very low sedimentation rates,"7 which are essential in determining the timeframe for remedies. Instead, the argument is that SMA-5 is above risk-based concentrations, and "that the best outcome that could be anticipated from an active remedy is that only about 30 percent of this SMA could be cleaned up to a natural background surface sediment concentrations, which itself is higher than risk-based concentration" (Feasibility Study, p. 97). However, this is a 30 percent reduction in toxicants over a large area of the bay. While concentrations might not meet human health risk-based criteria, this would still be a significant improvement. Another reason cited for not using an active remedy on the bay is that "cPAH concentrations in Site sediments exceed natural background by an order of magnitude." However, 196 acres of 2-4x natural background cPAHs have the potential to have more of an impact on the total toxicant load of the bay than 25 acres of 10x natural background cPAHs near the Mill Site, therefore this is not a justified reason for the remedy selection. Ecology makes assumptions about community concerns that cannot be validated since the community was never given an opportunity to review the alternatives for SMA-5. Ecology presented its cleanup plan to PGST Tribal Council, however the pros vs. cons were never presented. Ecology's concerns about environmental degradation and feasibility are appreciated, however the decision to leave an extensive area of contamination untouched should not be such a simple decision. Turbidity monitoring, silt fencing, and improved techniques can mitigate potential environmental impacts. **Need to address areas of SMA-5 with hotspot concentrations of PAHs, dioxins/furans, and bioassay failures as a new "West-Central Bay SMA" or "SMA-6" that will be covered by an**	CAP requires compliance with Sediment Recovery Zone (SRZ) requirements where monitored natural recovery does not achieve cleanup standards in ten years. Details regarding the need for and boundaries of the SRZ, monitoring requirements and any additional conditions for the SRZ will be determined during engineering design. Also see response to Comment #2.5 for more information about these concerns.

Comment	Ecology's Response
active remedy. In a working draft RI report from Ecology in January 2012, the areas that the Tribe is currently pushing for EMNR are covered as the West-Central Bay SMA (see attached figure). However, no such area is designated in either the Remedial Investigation Report from February 2012 or the updated version in December 2012. It is not mentioned in the Feasibility Study or in the CAP. What happened during the planning stages of the cleanup that eliminated this area and why was it eliminated? It seems that Ecology previously believed that sampling indicated that that area required remediation, however it was disregarded as the cleanup plan developed. EMNR in this "West-Central Bay SMA" or "SMA-6" area is a practicable remedy as defined by MTCA by being "capable of being designed, constructed and implemented in a reliable and effective manner including consideration of cost." EMNR is protective of the benthic community since it will provide minimal damage to their habitat and will be used in other areas currently designated as SMA-3 and SMA-4. EMNR will remediate SMA-6 more quickly than MNR's expected recovery rate, which could take 20 – 25 years. Therefore, it better meets the MTCA and SMS requirements that "[p]rovide for a reasonable restoration timeframe" and grant "[p]reference…to alternatives with a shorter restoration timeframe". **Need to establish a sediment recovery zone in areas above cleanup levels within the boundary of SMA-5 that are not listed as specific SMAs having planned remedial actions. This is to address exposure to contaminants that will be left above cleanup standards and to address the special characterization of that area.** Under WAC 173-204-570(b), if the restoration time frame for a cleanup action is longer than 10 years after completion of construction of the active components of the cleanup action, then a sediment recovery zone must be established as part of a cleanup action in accordance with WAC 173-204-570 and -590. In Ecology's response to	

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comments to the RI/FS, it was estimated that the center of the Bay would take 20 - 25 years to recover. Therefore, SMA-5 meets this qualification since there are areas above cleanup levels in that SMA that will not be addressed through an active cleanup remedy. However, the sediment recovery zone has special requirements, almost none of which have been addressed to date. These include (paraphrased from WAC 173-204-590(2) and (3)) describing the zone in the CAP, describing the zone in a new or amended decision document, public involvement in the duration and boundary of the zone, specific authorization in an enforceable document, analyzing the practicability of other cleanup actions, analyzing risks to human health and the environment from the zone, analyzing current and potential uses relative to releases, and appropriate institutional controls. Specifically, WAC 173-204-590(2) requires that the areal extent of the sediment recovery zone shall be as small as practicable, and that chemical concentrations within the sediment recovery zone shall be as close to the sediment cleanup standard as practicable. Ecology, in the Draft CAP, has only evaluated the practicability of remedial options when considering SMA-5 as a whole (602 acres), and has not included a more detailed evaluation of areas with higher concentrations of PAHs and dioxins, as was included in the Feasibility Study (196 acres). The CAP should thoroughly consider identifying higher priority sub-areas within SMA-5 where active remediation can (and should) be taken.	
Comment #1.2 **This is not a final cleanup action but an interim cleanup action according to MTCA since the entire site is not addressed in this cleanup action plan.** According to MTCA, an interim action is	Ecology acknowledges that the Cleanup Action Plan (CAP) and Consent Decree (CD) address the final cleanup of the bay only. Substantial cleanup has already been performed on the abutting uplands and Ecology has determined that any remaining upland sources of hazardous substances will not impact the bay. The Partial Remedial

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distinguished from a cleanup action in that an interim action only partially addresses the cleanup of a site (WAC 173-340-430). The current action described in the CAP is only an interim action and not a final action since the entire site is not addressed. The site does not include just the marine areas, but also the Mill Site and the upland areas that may have been affected by dioxins/furans from hog fuel burner ash outfall. This is shown in Exhibit B for the Consent Decree, however it is not explained in the CAP and the words "interim action" never appear in the CAP. Fully characterizing the nature and extent of contamination related to the Site is a requirement for the Remedial Investigation, and should not be left to some potential future, undefined effort. We see no discussion in MTCA and no precedent at other MTCA or SMS sites for a "Partial Remedial Investigation/Feasibility Study". A partial RI and FS can only support a partial cleanup action, which must be considered an interim action.	Investigation and Feasibility Study Report (PRI/FS) is titled as partial since it applies to the bay and not the uplands. Ecology will continue to oversee and require that all necessary actions be performed to identify and clean up contaminants on the uplands portions of the Port Gamble Bay and Mill Site.
Comment #1.3 **Protection of the Mill Site (SMAs 1 and 2)** The Tribe supports that Ecology and Washington Department of Natural Resources use their authority to insert institutional control language in the consent decree in order to protect cleanup and restoration activities. For example, the Tribe would like to see institutional controls that protect the integrity of the caps and other cleanup actions at the Mill Site from shoreline development. These include, but are not limited to, a prohibition on physical disturbance of sediment caps through activities such as pile driving, drilling, anchoring, and earthwork through a zoning overlay specific to the Property; a requirement that Pope provide off-shore signage alerting boaters of the cleanup status of the Property, the Property location, and the related prohibition on disturbing subtidal and intertidal sediments at the Property; and a requirement that Pope provide shore-side signage and educational material discouraging disturbance of the caps by visitors.	The CD and CAP require institutional controls including restrictive covenants to ensure the long-term integrity and protectiveness of specific cleanup elements such as sediment caps. During engineering design, Ecology will work with tribes and others to determine the precise institutional controls that will be required. Once performance monitoring confirms that the active remediation has met cleanup criteria, institutional controls will be filed within 10 days.

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Comment #1.4 **Inconsistency between cleanup levels** The proposed sediment cleanup level for dioxins/furans is based on a practical quantitation limit of 5 ng/kg TEQ. Based on the human health risk assessment, this value is significantly higher than a risk-based value protective of tribal shellfish consumers. WAC 173-204-505(15) states that when the limit for an analytical method is higher than the concentrations based on protection of human health or the environment, the department may require the use of another method to lower the practical quantitation limit. In developing sediment cleanup objectives for Port Angeles Harbor, Ecology has selected a PQL value for dioxins/furans of 2.3 ng/kg TEQ. Since Ecology has already determined that this PQL is achievable by multiple Ecology-accredited laboratories, a PQL of no more than 2.3 ng/kg TEQ should be used for Port Gamble Bay. For cPAHs, the Draft CAP indicates that the sediment cleanup level is based on Puget Sound "natural background". However, in Section 5.3.5.2 the Draft CAP states "Ecology selected a cleanup level for cPAHs based on the sediment background threshold value (BTV)" and that "BTVs are higher than natural background." BTVs are not discussed or defined in either the MTCA or SMS regulations. The MTCA regulations do specifically define background concentrations (WAC 173-340-709), and the calculation of natural background should be revised to be consistent with the regulatory requirements of MTCA.	The Sediment Management Standards (SMS) specify how sediment cleanup levels (SCL) are set considering natural background concentrations and practical quantitation limits (PQLs) for contaminants such as dioxins. The method used by Ecology for calculating natural background and PQLs are technically sound and appropriate for setting the SCL at Port Gamble. Two surveys of Ecology accredited labs occurred in 2011 to discern PQLs for a wide range of analytes. Ecology's selection of the PQL was based on the median value from the 11 labs in the surveys. This approach was presented for public review, per SMS requirements, at the 2012 Sediment Management Annual Review Meeting (SMARM). In Port Gamble Bay, this PQL for dioxins is greater than a risk-based value or natural background so the SMS requires setting the cleanup standard at the PQL, or 5ppt toxicity equivalent quotient (TEQ). Ecology did not use another method to lower the PQL because the median approach is technically sound and using another method would not have resulted in a different cleanup action. The calculation of the natural background or background threshold value (BTV) conforms to Ecology's recommended method for establishing natural background as a SCL and was determined to be technically correct and appropriate for Port Gamble. This background value is based on an upper bound on the mean of the background data set and will always be higher than the mean. The mean from a data set cannot serve as the background standard since about half the background data would exceed the mean. The SMS requires that the sediment cleanup level be set as the highest of three different values; a risk-based concentration, natural background or PQL. For dioxins at Port Gamble Bay, the PQL is 5 ppt TEQ, the natural background is 4.35 ppt TEQ and the risk based dioxin concentration for Port Gamble Bay was determined to be less than natural background. So the SCL is set at 5 ppt TEQ

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	for dioxin.
Comment #1.5 **Ensuring the cleanliness of dredge material** What standards will be used to measure the cleanliness of dredge material from the source? The current version of the CAP does not list the standards for the dredge material and how frequently the testing will be performed. The screening levels listed in Table 8-2 of the DMMP Users Manual are significantly higher than Port Gamble's Cleanup Standards. For example, screening levels for benzo(a)pyrene are 1,600 ppb, 100 times higher than the cleanup standard for all cPAHs. Section 14.2 of the DMMP Users Manual stipulates how chemical concentrations greater than the Sediment Quality Standards (SQS) but lower than the Cleanup Screening Level (CSL) may be appropriate for beneficial use on a case-by-case basis after consideration of site-specific factors. What will Ecology's policy be on beneficial reuse of materials? How will Ecology ensure that capping and EMNRmaterials are not re-contaminating the Bay? This policy on beneficial reuse of materials should be subjected to notice and comment.	Beneficial reuse of clean navigational dredge material is the preferred source of cap material. Clean navigation dredge material (e.g., from the Snohomish River) that would be considered for beneficial use in Port Gamble Bay will be screened using current Dredge Material Management Program (DMMP) suitability guidelines for unconfined, open-water disposal. Sediment sources that are determined by the Dredged Material Management Office (DMMO) to be suitable for open-water disposal, and which are also determined by Ecology to be suitable for placement in Port Gamble Bay, will be further evaluated during engineering design. Dredged material used in the Bay will meet the chemical screening requirements developed for this site during engineering design.
Comment #1.6 **Need to address shellfish quality in monitoring plans.** The current CAP does not address any sort of shellfish monitoring in Section 4.7 Compliance Monitoring or in Section 7.1 Monitoring Objectives and Rationale. However, in the SEPA MDNS, the General Conditions stipulate "development of maintenance and monitoring plans and special measures to protect existing natural and other resources including shellfish beds." Also, shellfish monitoring needs to be done as part of SMA-5 monitored natural recovery to ensure that the sediment recovery zone is recovering in the expected timeframe and that there is a reduction in human health risk. The Tribe has requested that DOH work with Ecology to develop a sampling and monitoring plan during the cleanup, however none of this work is included in the current version of the CAP. Port Gamble Bay is an important cultural	Ecology will continue to communicate with the tribes as sampling and monitoring plans are developed and to gather input on ways to reduce impacts of the cleanup on resources and resource harvest. The engineering design will include an evaluation of potential impacts to shellfish as a result of dredging, and will develop appropriate operational controls and best management practices to minimize those potential impacts. Ecology will also work with resource agencies and DOH as it develops a sampling and monitoring plan during engineering design.

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and natural resource for subsistence shellfish harvest, therefore shellfish monitoring is not an option but essential.	
Comment #1.7 **Analyze paralytic shellfish poisoning (PSP) outbreaks that correlate with previous dredging events in Port Gamble Bay and look at ways to minimize PSP closures during future dredging.** The Tribe and Ecology are currently in disagreement over how much of a contribution dredging has had on PSP outbreaks in Port Gamble Bay. Ecology has argued that the PSP outbreaks are more closely associated with El Nino events than dredging, whereas the Tribe has argued that PSP outbreaks centered on Port Gamble Bay have occurred frequently during past dredging events. A trigger for a reopener should be if any samples collected for PSP exceed the FDA level of 80 micrograms per 100 grams of tissue during the dredging timeframe, then there should be a re-evaluation of dredging technology in order to ensure that future PSP outbreaks do not occur or are at least minimized. No proposed measures are listed in the MDNS for preventing or minimizing PSP outbreaks. Additional consideration should be made on how to prevent future PSP outbreaks during dredging in Port Gamble Bay. Alexandrium, the algae responsible for saxitoxin, can develop dormant cysts, which settle in the bottom sediment to wait for more favorable growing conditions. 10 Therefore, it is conceivable that dredging bottom sediments would increase the risk of an Alexandrium algal bloom. Cyst abundance modeling could be used as a way to determine what areas and conditions pose the highest potential for a PSP outbreak.	The engineering design will include a detailed evaluation of potential impacts to shellfish as a result of dredging, including paralytic shellfish poisoning (PSP), and will develop appropriate operational controls and best management practices to minimize those impacts including a. Ecology plans to host a workshop as this planning ensues to engage tribes, agencies and other Ecology staff to discuss environmental dredging methods.
Comment #1.8 **Need to ensure that SMA-3, SMA-4 and SMA-5 will be dealt with last in order to ensure that there will not be recontamination from piling removal.** This seems to be the current plan in the CAP since Section 6 describes: "Sequencing considerations include beginning with source control, followed closely in time by intertidal excavation, subtidal	We agree. Ecology will sequence the actions in the order noted.

Comment	Ecology's Response
dredging, and backfilling. Capping and EMNR will be sequenced to occur after removal actions are completed to maximize control of dredging residuals and to accelerate natural recovery processes, with the goal of reducing the overall restoration time frame to the extent practicable and maximizing short term effectiveness" (p. 47). Also, in the MDNS, it is described how "All piling removal will be sequenced with follow-on dredging or capping actions to maximize control of piling removal residuals." When pilings are removed, there is the high potential for breakage due to the age of the pilings and the weathering that has occurred since they've been installed. Their breakage could result in concentrations of cPAHs that would eventually deposit in the deeper areas of the Bay. This could potentially result in higher concentrations of cPAHs than are currently measured in Port Gamble Bay sediments.	
Comment #1.9 **The Tribe would like to see technology used that will minimize the redistribution of contaminants from dredging.** The dredging and underwater construction process has the potential to redistribute contaminants from the sediment into the water column. Therefore, the Tribe advocates using the best available technology to minimize any potential sediment plume. These include suction dredging, sediment curtains, and silt fencing. Turbidity monitoring would serve as a confirmational tool to see if these technologies are working. There is no discussion of any mitigation measures such as those mentioned above in the Environmental Health section in the MDNS. The only proposed mitigation is temporary closure to shellfish harvesting beds "due to the presence of heavy construction equipment, in-water activity, and sediment disturbance associated with the cleanup action." However, this is unacceptable since a closure would have a severe impact on treaty rights. As mentioned previously, over 80% of the Tribe's subsistence shellfish is harvested from the Bay.	Dredging will be conducted using operations and best management practices that minimize water quality impacts. Water quality will be monitored to verify that these operations and practices are protective. The engineering design may identify specific dredging equipment and methods to be used during cleanup operations, and will include detailed construction monitoring plans. The engineering design will also include a detailed evaluation of potential impacts to shellfish resulting from dredging. Ecology will discuss dredging methodology with tribes and others and identify ways to minimize impacts to harvesting activities when the plan is developed. Ecology plans to host a workshop as this planning ensues to engage tribes, agencies and other Ecology staff to discuss environmental dredging methods.

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Comment #1.10 **The Tribe would like to be actively involved in the remedial design phase.** The Tribe would like to review and provide comment on all documents associated with the remedial design phase of Port Gamble Bay. These include but are not limited to the Remedial Design Work Plan and Adaptive Management Plan, Plans and Specifications, the Engineering Design Report, the Operations Monitoring and Maintenance Plan, the Construction Quality Assurance Plan, and the Cleanup Action Report.	Ecology will continue to engage tribes during engineering design including about issues that affect tribal harvest and activities on the bay.
Comment #1.11 **How can you ensure the site boundaries of SMA-5 when cadmium and PAH contamination has not been fully delineated?** Two contaminants of concern that are addressed in the current cleanup action plan are cadmium and cPAHs. Both cadmium and cPAHs were detected above cleanup levels at the periphery of SMA-5 boundaries. These include samples BW-22 and BW-21 respectively. However, how can you ensure that the contamination does not extend beyond the proposed boundaries of SMA-5 if those points were never delineated? What are your justifications for SMA-5's site boundaries and how are you sure that the contamination in the southeast section of the Bay has been thoroughly delineated?	The cleanup boundaries for the site were developed following a rigorous evaluation of sediment data collected throughout Port Gamble Bay, including samples collected at the south end of the bay both inside and outside of the existing SMA-5 boundary. Data beyond the boundaries of the bay site show those areas are below cleanup levels. Those data are available from the PRI/FS at the Port Gamble Bay and Mill Site website at https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=3444.
Comment #1.12 **Fish windows are insufficient to protect sand lance and surf smelt.** Fish windows in Feasibility Study and SEPA MDNS differ from baseline ecological assessment and may be insufficient for protecting cultural/natural resources. The ones listed in the Feasibility Study and SEPA MDNS prohibit construction from January 14 through July 15. Please compare the fish windows you have selected relative to the species timeframes provided by our finfish biologist, Abigail Welch, as well as the ones listed in the baseline ecological assessment in order to ensure the maximum protection of cultural and natural resources. The current fish windows in the draft CAP take into account spawning for	The cleanup project will be implemented consistent with inwater work windows established by the U.S. Army Corps of Engineers (USACE) and the Washington Department of Fish and Wildlife (WDFW). The proposed work window outlined in the SEPA MDNS is outside the spawning timeframe for herring. In SMA-1, -2, and -3, no work is proposed to occur in documented or potential spawning areas for surf smelt and sand lance. In SMA-4 and -5, construction will occur only in small lengths of the intertidal zone. In these SMAs, we will sequence intertidal capping and excavation as well as removal of structures and debris between July 16 and October 14 to avoid spawning timeframes for surf smelt and sand lance.

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salmonids and herring, but do not take into account spawning for sand lance and surf smelt, two important intertidal species that serve as valuable prey for salmon. Since intertidal dredging could be disruptive to sand lance and surf smelt spawning and development, we suggest leaving the intertidal dredging until May/June/July and having the deeper, bottom dredging during October/November/ December. This schedule would allow sand lance and surf smelt to spawn in intertidal areas as well as have bottom dredging during the winter months when there is less likely to be a PSP outbreak. Also, the fish windows do not take into account harvesting periods. The most important fishery that would be affected by the construction window in the CAP includes the coho salmon harvest, which occurs from mid-August through late November.	During the permitting process, Ecology will coordinate and consult with the tribes to determine the most efficient means to achieve the project goals and objectives while balancing concerns about tribal harvesting periods.
Comment #1.13 **The CAP needs to identify alternate sources of dredge material if beneficial reuse material is not available.** In its current form, the CAP only plans on beneficial reuse of Port Gamble Bay dredge material and navigational dredge material. However, Ecology admits that "based on history, large volumes of this type of material are only periodically dredged in Puget Sound" (p. 47). Therefore, the CAP should address alternate sources of material for capping and EMNR if the first two sources are unavailable.	Alternate sources of dredge material include commercial quarries. Suitable sources of beneficial reuse material will be identified during engineering design. Also see response to Comment #1.5.
Comment #1.14 **"Further, upon completion of a dredge, cap, or EMNR action in SMA-5, it is not clear that changes in tissue concentrations would be observable, and they would likely be very small compared to the overall risk."** Please show what literature or analysis supports this assumption. Looking at concentrations in shellfish is one way of observing if a remedial action is working. Also, Ecology even admits that "the best outcome that could be anticipated from an active remedy is that only about 30 percent of	See response to Comment #1.1 for information on Ecology's determination regarding risk and extent of active cleanup. The post-construction monitoring plans will include shellfish tissue analysis to determine the effects of cleanup actions and natural recovery processes on tissue concentrations.

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this SMA could be cleaned up to a natural background surface sediment concentrations, which itself is higher than risk-based concentration" (p. 94).	
Comment #1.15 **Description of SMA-5** Should mention 196 acres of PAH-contaminated sediments that exceed 3x natural background in description of SMA-5 (p.9).	See response to Comment #1.1.
Comment #1.16 **Cleanup Action Objectives** If one of the sediment cleanup action objectives is to "Eliminate, reduce, or otherwise control to the extent practicable risk to humans from ingestion of seafood containing chemicals that exceed risk-based concentrations and/or natural background concentrations," then why will the concentrations of PAHs and dioxin/furans in the central section of the bay be left in place for 20-25 years under the current cleanup action plan? Also, why would a 30 percent reduction in human health risk be trivialized?	Ecology takes human health considerations very seriously and is committed to achieving the best cleanup for this site. Ecology believes this remedy is protective of human health and the environment, permanent to the maximum extent practicable and provides for a reasonable restoration timeframe consistent with MTCA, WAC 173-340 and SMS, WAC 173-204.The source control actions and active remediation of the highest levels of contaminants in sediments will accelerate natural recovery rates. Hazardous substance levels will continue to decrease over the duration of the natural attenuation period.
Comment #1.17 **Best management practices.** Should also cite Best Management Practices for Pile Removal and Disposal from US Army Corps of Engineers.	Best management practices for pile removal and disposal as outlined by USACE have been incorporated into the project.
Comment #1.18 **Consider effects of winter storms.** Need to analyze winter storms and their effect on turbidity and erosion.	Evaluation of storm or erosional events and appropriate grain sizes will be performed during engineering design.
Comment #1.19 **Should analyze how construction at the Mill Site and placement of beneficial reuse material would be effected in the event of 100-year flood event.** The Mill Site is located in a 100-year flood plain (SEPA MDNS). However, how will the upland re-handling/ beneficial reuse area be affected by 100-year flood events? How will future development at the Mill Site be impacted? How will more frequent "100-year floods" caused by climate change affect this? Worst-case scenario climate change predictions done by Ridolfi show that Point Julia could be completely submerged by water by	Any dredged materials placed on the upland areas of the site will be contained. The details of material handling and upland containment will be developed during engineering design to ensure that material will be handled in accordance with state surface water quality standards and engineered to withstand anticipated flood or rain events.

Comment	Ecology's Response
2050.11 Since Teekalet Point is essentially Point Julia's geographical mirror image, there could be a similar fate for the Mill Site and upland re-handling/ beneficial reuse area.	
Comment #1.20 **PCBs listed as a human health chemical of concern but not a site-related human health chemical of concern.** PCBs were present at the Mill Site with transformers as a source. PCBs have been detected in samples taken of biota such as shellfish near the Mill Site and in the Bay. Therefore, the Tribe proposes carrying PCBs into the contaminants of concern evaluated for long-term monitoring. Since the PCB detections are often co-located with other contaminants, we expect that cleanup actions will also remediate PCBs. The monitoring will serve as a confirmational tool to ensure that levels of PCBs are dropping in sediment and shellfish.	Ecology carefully reviewed data for PCBs and concluded PCBs were generally within natural background ranges, with the exception of two intertidal locations that will be addressed by the cleanup of other chemicals of concern (COCs). The COCs were identified consistent with the SMS. Ecology will require that site-specific, human health COCs be monitored through the long-term monitoring period.
Comment #1.21 **"Decant water from the upland settling basins will be discharged back into Port Gamble Bay and Hood Canal according to final designs to be approved by Ecology to meet Washington State Surface Water Quality Standards (Chapter 173-201A WAC)" (SEPA MDNS).** The Tribe would like to review and comment on any plans that involve decant water from upland settling basins being discharged into Port Gamble Bay or Hood Canal.	Ecology will continue to engage with tribes during the engineering design phase as plans are being developed.
Comment #1.22 **"PR/OPG or the selected contractor will consult with Ecology prior to employing other pile removal methods" (SEP A MDNS).** The Tribe would like to be informed if the pile removal methods are changed from either vibratory extraction or direct pull.	Ecology will work to keep the tribes informed on a regular basis of progress on the cleanup including pile removal.
Comment #1-A Josh Wisniewski, Port Gamble S'Klallam Tribe (Letter)	
Comment #1-A **Cultural Resource Assessment Plan**	

Comment	Ecology's Response
Port Gamble Bay is a crucially important cultural/natural resource network and landscape for the Port Gamble S'Klallam Tribe. Archeological sites on both sides of Port Gamble Bay provide evidence of the Tribe's deep history of use and occupancy around Port Gamble Bay. This clean up and accompanying cultural resource assessment is located within the Port Gamble S'Klallam Tribe's Adjudicated Usual and Accustomed Fishing Area and is located within the Tribe's Traditional and Historic Use Area.	Section 2.2 of the Cultural Resources Action Plan states that the Cultural Resources Study Plan will include a framework for "*Documentation of Potential Traditional Cultural Properties, Cultural Landscapes, and Sacred Sites*." In addition, potential effects to the Tribe's Usual and Accustomed Fishing Area will be evaluated by the U.S. Army Corps of Engineers (USACE) as part of their regulatory process. We appreciate the information about Tribal Resolution 11-A-073, the Tribe's Cultural Resource Register. Any information that the tribes are comfortable sharing will be incorporated into the Cultural Resources Study Plan and Cultural Resources Survey Report.
Pursuant to the Port Gamble S'Klallam Tribe's cultural resource management policy adopted by Tribal Resolution 11-A-073 Port Gamble Bay is eligible for the Tribes' Cultural Resource Register as both a Traditional Cultural Property and as a Port Gamble S'Klallam Cultural Landscape. Port Gamble Bay is also eligible for the National Register of Historic Places as a Traditional Cultural Property and as a Native American Cultural Landscape.	Regarding page 1, this language is not meant to imply that comments would be considered and then dismissed. The intent is for comments to be considered during the development of the cultural resources studies framework as the tribe suggests. We believe this is a key component of cultural resources consultation, which will ultimately be led by USACE.
Page 1. At the bottom of Section 1.1 Background and Regulatory Context it states "Future cultural resources documents developed for the clean up will build on the overview and consider the comments received. This should state that the CR assessment will not just consider Tribal and SHPO comments but incorporate them into the assessment. Writing that comments from the tribes or DAHP will considered is essentially meaningless unless there is a stated understanding that there is a framework for their incorporation.	Regarding page 4, thorough identification of all historic properties within the potentially affected area, including any NRHP-eligible sites, will be included as part of the cultural resource survey for the project. We did not intend for the CR Plan to be considered an inclusive listing of all historic properties, and appreciate the information from the tribe. A socio-cultural impact assessment will be included in the cultural resources assessment and evaluated by USACE if required as part of the Section 106 process.
Page 4. Assessment and Consultation Approach 2.1 Previous Research and Consultations. It is stated that Port Gamble Bay is part of the Port Gamble Historic District (PGHD), designated a National Historic Landmark in 1966. It should also be	These same standards will also be applied to all tribes that have expressed an interest in this area including, to-date, Suquamish, Jamestown S'Klallam, Lower Elwha Klallam, and Skokomish.

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stated that Port Gamble is a National Register eligible Traditional Cultural Property and Native American Cultural Landscape for the Port Gamble S'Klallam Tribe. It was also agreed upon at the 2013 interagency Cultural Resource meeting hosted by Ecology and attended by DAHP, DNR, USACE and the Port Gamble S'Klallam Tribe that there would need to be a socio-cultural impact assessment to determine the potential impacts actions resulting from the clean up could potentially have on the Tribe and Tribal cultural practices. There is no language in the cultural resource assessment plan referencing this agreed to study. It is important that this deliverable be identified in the Cultural Resources Assessment Plan.	
Ethel Branch, Kanji & Katzen, PLLC, on behalf of Port Gamble S'Klallam Tribe (Letter)	
Introductory Comment: On behalf of the Port Gamble S'Klallam Tribe (the "Tribe") we would like to acknowledge the hard work the Department of Ecology ("Ecology") and the settling potentially liable parties, Pope Resources LP and OPG Properties, LLC (collectively, "Pope"), continue to put into the cleanup of the Port Gamble Bay and Mill Site (the "Site"). A great amount of progress has been made in this regard, and the Tribe is thankful for that.	Thank you for your comment.
Comment #2.1 **I. The Draft Decree and DCAP only "partially address the cleanup of a site" and thus relate to an interim action, not to a final cleanup action.** (Section I of these comments clarifies that the Draft Decree and DCAP relate to an interim cleanup, not a final cleanup action, and requests that Ecology revise the Draft Decree and DCAP accordingly.)	See response to Comment #1.2 for more information about the current action as a final cleanup for the inwater portion of the Port Gamble Bay and Mill Site.

Comment	Ecology's Response
The DCAP improperly characterizes the remedial action proposed for the Site as a final cleanup action. The implementing regulations for the Model Toxics Control Act ("MTCA") clarify that an interim action "partially addresses the cleanup of a site," WAC 173-340-430(1), whereas a final cleanup action requires Ecology to "[u]se permanent solutions to the maximum extent practicable" and "[p]rovide for a reasonable restoration time frame" when selecting the final cleanup action, WAC 173-340-360(2)(b). The areal reach of the Site is yet undefined and newly discovered dioxin/furan contaminants remain inadequately addressed in the December 2012 Partial Remedial Investigation and Feasibility Study (the "PRI/FS"). The highly unusual "partial" nature of the PRI/FS underscores the incomplete nature of the actions contemplated in the Draft Decree and DCAP. See WAC 173-340-350(2) ("a remedial investigation/feasibility study shall be completed before selecting a cleanup action . . . except for an emergency or interim action"). Indeed, the Draft Decree and DCAP baldly acknowledge that a significant portion of the Site will be excluded from the proposed remedial action, and that the Draft Decree and DCAP only address the more narrowly circumscribed Property. The action proposed in the Draft Decree and DCAP does not address known dioxins/furans in the upland areas, and does not purport to achieve cleanup standards for contaminants in any portion of the Site outside the Property. The proposed action also will not timely achieve sediment cleanup standards for contaminants in SMA-5, which is targeted in the proposed cleanup action. See Section II below for a full discussion of this issue. In combination with novel provisions in the Consent Decree that allow the Parties to expand the size of the "Property," potentially to the size of the entire "Site," the cleanup documents smack of an attempt to improperly convert an interim action into a final cleanup action. Because the remedial action proposed in the Draft Decree and DCAP does not offer any solution	

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whatsoever for areas of the Site outside the scope of the Property, and provides no time frame for restoration of the uplands or SMA-5, the proposed cleanup action fails to meet the threshold requirements that a final cleanup action "[u]se permanent solutions to the maximum extent practicable" and "[p]rovide for a reasonable restoration time frame." WAC 173-340- 360(2)(b). See also RCW 70.105D.030(1)(b) (articulating a mandatory preference for permanent solutions). Instead the proposed remedial action matches the criteria of an interim action because it "partially addresses the cleanup of a site," WAC 173-340-430(1), "[a]chieve[s] cleanup standards for a portion of the site," and "clean[s] up hazardous substances from all or part of the site, but [does] not achieve cleanup standards," WAC 173-340-430(2)(a)-(b). We thus recommend that the Draft Decree1 and DCAP be revised to reflect that they address an interim action, not a final cleanup action. If Ecology and Pope insist that the Draft Decree and DCAP must address a final cleanup action for the Property and any other aspects of the Site that Ecology deems fully remediated, the PRI/FS and the Draft Decree and DCAP should be revised to address the full scope of contaminants within the full areal reach of the Site. Otherwise, the Tribe expects Ecology to address the upland areas showing dioxin/furan levels (and possibly above-threshold levels of other contaminants) in a comprehensive sampling plan and in a separate consent decree and cleanup action plan—all of which will be open to public notice and comment.2	
Comment #2.2 **II. The Cleanup Documents improperly lump together portions of SMA-5 that show sample results in great excess of cleanup levels with aspects of SMA-5 that show far less toxic sample results.** (Section II of these comments advocates that Ecology address the high concentrations of toxicants in Sediment Management Area 5 ("SMA-5") through the use of active remediation, or	See response to Comment #1.1 for information about Ecology's designation of SMAs and selection of remedial alternatives and for SRZ.

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through immediate designation of those areas as a sediment recovery zone.) Ecology and Pope select the Monitored Natural Recovery ("MNR") remedy for SMA-5 in the DCAP. MNR consists of passive sampling to assess the rate of natural recovery rather than active remediation. DCAP at 23. SMA-5 makes up the majority of the two square miles of the Property, and samples from SMA-5 show cPAH3 levels that exceed, by "an order of magnitude," natural background and MTCA risk criteria for protection of human health under exposure scenarios modeled. DCAP at ES-1, 50-51. SMA-5 also includes dioxin/furan contaminants, which can be toxic to human health at almost any level.4 Portions of SMA-5 ("hot spots") have cPAH concentrations at four times natural background levels (whereas most of the rest of SMA-5 has cPAH concentrations at two times natural background levels, or less)5 and dioxin/furan samples well in excess of natural background.6 The concentration of toxicants in the hot spots is so amplified with comparison to the rest of SMA-5 that much of it was treated as a distinct "West-Central Bay SMA" in Figure 12-1 of the January 2012 RI. Despite the risks to human health posed by the hot spots in SMA-5, the selected remedial action is to effectively do nothing for ten years. See DCAP at 50-53.	
Comment #2.3 There are a number of problems with the proposal to simply monitor the continuing exposure of the public and the environment to toxicants at levels well above cleanup standards. To begin with, the approach is inconsistent with the MTCA and Sediment Management Standard ("SMS") regulations, which require Ecology to "[u]se permanent solutions to the maximum extent practicable." WAC 173-340-360(2)(b)(i), -204-570(3)(d).7 The SMS regulations specifically caution that "[c]leanup actions for a site shall not rely exclusively on monitored natural recovery or institutional controls and monitoring where it is technically possible to implement a more permanent cleanup action."8 WAC 173-204-	Ecology evaluated handling of the area described here as a separate SMA for implementation of active remedy and risk reduction and determined the benefits were not commensurate with the adverse impacts of the additional inwater work. In Port Gamble Bay, the consumption of intertidal clams and oysters and subtidal geoduck results in the greatest risk to humans. The location discussed here is entirely subtidal, and so does not affect the clams and oysters. It also lies outside the designated geoduck harvest area. We acknowledge that with MNR, Dungeness crab may still be affected within the timeframe for recovery. However, the cost of active remediation in this area was determined to be disproportionate to the benefit that would be gained. After eliminating

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570(3)(h). Passive monitoring will provide no solution at all, much less a permanent solution. The DCAP claims this result is justified because "no practicable alternative exists to achieve cleanup levels," DCAP at 50, but Ecology and Pope have themselves created the alleged absence of practicable alternatives by artificially forcing two distinct SMAs into one SMA in a manner that dilutes the toxicity of a relatively small, delineable SMA that consists of the hot spots in SMA-5 ("SMA-6"). Given the high risk to human health posed by SMA-6 and the ability to separately delineate this SMA (based on concentrations of contaminants, and as Ecology has already done in disaggregating the West-Central Bay SMA), Ecology must disaggregate SMA-6 from the less toxic SMA-5 and designate a new, active remedy for SMA-6 (such as Enhanced Monitored Natural Recovery ("EMNR")). EMNR will likely provide a practicable remedy for SMA-6 because it will require the placement of six inches of fill over a much smaller area of subtidal sediment than would be required to address all of SMA-5, and thus better meets the "practicable" requirements of being "capable of being designed, constructed and implemented in a reliable and effective manner including consideration of cost." WAC 173-340-200.	the majority of risk to human health by performing the 121 acres of remediation in the CAP, the additional 196 acres of remediation would achieve only about 30 percent reduction of the remaining risk. This represents a 160 percent increase in remediated area and an additional year of construction for a nominal decrease of the current risk. In addition, the adverse effects of disruption to the benthic environment and the disruption of tribal harvest that would occur with active remediation in this area outweigh the incremental benefit that would be gained through active remediation. Additional EMNR would also require an additional construction season of remediation work in the bay. See response to Comment #1.1
Comment #2.4 **The use of MNR to address the broad spectrum of contaminant levels in SMA-5 will also result in an unreasonably delayed solution**, which violates the MTCA and SMS regulatory requirements that cleanup actions "[p]rovide for a reasonable restoration time frame," WAC 173-340-360(2)(b)(ii), -204-570(3)(e), and that grant "[p]reference . . . to alternatives with a shorter restoration time frame," WAC 173-204-570(3)(e).9 Ecology itself has acknowledged that the sedimentation rates in Port Gamble Bay (the "Bay") make it reasonable to estimate that it will take twenty to twenty-five years for the center of the Bay to reach natural recovery, and that 7 "sedimentation rates are not rapid enough to allow recovery within the ten-year timeframe	Additional work will occur during engineering design to better assess rates of recovery. Ecology will incorporate sampling and modeling to assess rates of recovery to design appropriate monitoring regimes as part of the engineering design. Natural recovery processes are expected to accelerate with source control actions. Two sources for cPAHs were identified. The first, burning hog fuel, was eliminated when the mill shut down. The second source is creosote from pilings and overwater structures which will be removed as a source control measure and will be the first action of the inwater remediation.

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anticipated by the SMS for most cleanups." Department of Ecology, Response to 2011 Public Comments: Draft Remedial Investigation and Draft Feasibility Study for the Leased Area and for the Pope & Talbot Sawmill Site at 34 (Feb. 2013). Twenty to twenty-five years is not a reasonable restoration time frame, especially for a location heavily used for subsistence fish and shellfish harvests. Ecology should thus take affirmative steps to remediate SMA-6 through the use of EMNR.	
Comment #2.5 **Designate all or part of SMA-5 as a Sediment Recovery Zone.** If Ecology and Pope reject the creation of SMA-6 and the use of EMNR on that SMA, they should revise the DCAP to acknowledge that the selected remedial action for SMA-5 will not achieve sediment cleanup standards within ten years after completion of the active components of the cleanup action and take the necessary preliminary steps to designate all or part of SMA-5 as a sediment recovery zone. WAC 173-204-590(1) ("[s]ediment recovery zones are required at sites and sediment cleanup units where: (a) [Ecology] has determined . . . that the selected cleanup actions cannot achieve sediment cleanup standards within ten years after completion of construction of the active components of the cleanup action"). Under this approach, Ecology must (1) make the recovery zone designation for the hot spots or SMA-5 "prior to implementation of [the] cleanup action;"10 (2) establish the duration and boundary of the sediment recovery zone with public involvement; (3) describe the sediment recovery zone in a revised DCAP; (4) authorize the sediment recovery zone in a revised Draft Decree; and (5) incorporate appropriate source control measures (such as the use of sediment curtains and suction dredging) into a revised DCAP to minimize contaminant loading on the sediment recovery zone due to ongoing discharges.11 In authorizing a sediment recovery zone in SMA-5, Ecology must consider factors such as potential risks to human health and the	A Sediment Recovery Zone (SRZ) requires Ecology's written approval, identification in an enforceable document and a public review process. To ensure compliance with these SMS requirements Ecology has included the SRZ in the CAP (as an appendix to the Consent Decree) and the CAP specifies steps to assess recovery rates and implementation of public notice for a SRZ. See response to Comments #1.1 and 2.5 for more information on SRZs.

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environment posed by the sediment recovery zone, the technical practicability of eliminating or reducing the degree of chemical contamination or level of biological and human health effects within the proposed sediment recovery zone, the current and potential future uses of the sediment recovery zone, and the need for institutional controls to reduce risks to human health while the sediment recovery zone is in place. WAC 173-204-590(3).	
Comment #2.6 Section III of these comments highlights the need for consistency and clarity, as well as notice, when the Cleanup Documents are amended, and especially when the Cleanup Documents are applied to a broader areal reach of the Site than just the Property. Section III also points out significant public participation oversights made in the Cleanup Documents with relation to tribes, and advocates for specific remedies, such as the inclusion of a Tribal Participation Plan section in the Consent Decree, as well as tribal participation in the monitoring and periodic review of the cleanup. **III.Tribal Participation** Tribal governments are to be kept informed and involved in the development and implementation of remedial actions, WAC 173-340-130(7)(a), and Ecology "shall ensure appropriate coordination and consultation with federally recognized Indian tribes" in implementing the SMS regulations, WAC 173-204-130(5). "The nature and degree of coordination and consultation shall be commensurate with the . . . tribes' interests and needs at the site." WAC 173-340-130(7)(b). Here, the Tribe's reservation lies on the shore of the Bay, and the Tribe has treaty-reserved rights to harvest finfish and shellfish in the Bay. Tribal members obtain much of their food and livelihood from the Bay, and spend their lives in close contact with its waters and the sediment beneath it. Tribal interests and needs at the Site are thus incredibly high and so must be the nature and degree of Ecology's coordination and consultation with the	See response to Comment #1.3. Ecology has considered the request to provide more specific detail describing how Ecology will engage tribes during the coming stages in the cleanup action, including permitting, design and implementation. We received your proposed language for a tribal participation plan and have appended it to this document (*see Appendix A*). Ecology takes seriously its responsibility to engage tribes in the planning and decision making process and values the opportunity. We will work with tribes as we develop a plan for involving tribes during the engineering design and cleanup. Ecology does not believe that changes to the Consent Decree are needed to accomplish these objectives. Ecology recognizes that the interests of the tribes is different from the general public and will continue its approach to working directly with the five tribes. Ecology considered tribal interests, for example, in the development of the recent Cultural Resource Assessment Plan that describes the process for completing a Cultural Resources Assessment of the cleanup in Port Gamble Bay. The tribes were actively engaged in reviewing and contributing to this plan. Ecology has held numerous status update meetings, workshops and technical meetings that involved the five tribes during the cleanup investigation and planning

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Tribe. The current Cleanup Documents fall far short of this standard. **a. Any expansion in the scope of the Site addressed by the Consent Decree and the CAP requires public notice and comment.** In its current form, the Draft Decree and DCAP allow Ecology and Pope to expand the scope of the Site deemed to be the subject of a final cleanup action through the use of amendments. If Ecology determines that no further remedial actions are necessary for all or a portion of the remainder of the Site, such areas can be covered by an amendment to the Consent Decree and CAP. Draft Decree at 26. See DCAP at 1. Even if Ecology determines that further remedial actions *are* required at the remainder of the Site, those actions may be performed under an amendment to the Consent Decree and CAP.12 Id. The Cleanup Documents are silent on whether or not such amendments will trigger public notice and comment. In order to keep tribal governments informed and involved in the development and implementation of remedial actions, amendments to the Cleanup Documents to expand the scope of the Site deemed to be the subject of a final cleanup action must trigger public notice and comment. The Cleanup Documents should be revised to clearly state this.13 Additionally, the thirty-day public notice and comment timeline for review of amendments should be more clearly stated in the amendment provisions of the Consent Decree, WAC 173-340-600(4)(e) ("Unless stated otherwise, comment periods shall be for thirty days at a minimum"), and the DCAP should be revised to clearly address the means by which the CAP can be amended (the DCAP is currently silent on this point). To further ensure that tribal governments are kept informed and involved in the development and implementation of remedial actions, Ecology and Pope should also address the ambiguous distinction between "substantial changes" and "minor changes" in the Draft Decree's amendment provision. Substantial changes trigger public notice and comment and require formal amendment by written stipulation among Ecology and Pope. Draft Decree at 15.	stage and will continue to do so. *Note: Ecology is also collaborating with Port Gamble S'Klallam Tribe in carrying out resource and habitat protection and enhancement actions throughout the Bay. While this is not a part of the MTCA action, it does benefit the bay.* Any amendments to the CD that would expand the geographic boundaries of the Site will require public notice. Such notice would be carried out in compliance with MTCA and SMS public notice requirements and such notice would extend for a minimum of 30 days. The Public Participation Plan (PPP) for the Bay also includes a process for people to engage in review and comment. Ecology will include more specific information about tribes as it updates this plan. This plan is not a part of the consent decree but is a separate document that can be updated as needed.

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Minor changes are to be documented in writing by Ecology, but will not trigger public notice and comment requirements. Id. at 14-15. The unclear distinction between "substantial changes" and "minor changes" thus threatens to undermine the Tribe's right to notice and comment on changes that the Tribe may consider to be substantial. To remedy this, the Tribe and other interested tribes should receive notice of all proposed informal amendments and "substantial change" should be defined in the Draft Decree to include, among other things: (1) any determination by Ecology that no further remedial actions are required at all or a portion of the remainder of the Site; (2) any actions to perform further remedial actions (remedial investigation, feasibility study, cleanup) at the remainder of the Site; and (3) incorporation of all or a portion of the remainder of the Site under the Consent Decree. **b. Tribal governments must be kept informed and involved in the development and implementation of remedial actions through the use of a meaningful Tribal Participation Plan.** The draft Public Participation Plan14 does not once address tribes, even in the "Community Profile" description, despite the strong connection five tribes have to the Bay, and despite the Port Gamble S'Klallam Tribe's residence on the shores of the Bay. Yet the interest of the five tribes in the Bay is different from the general public's interest and should accordingly be addressed in a Tribal Participation Plan that directly addresses tribal interests and needs at the Site. Specifically, these interests and needs can be addressed in a new section of the Consent Decree that will vest interested tribes with rights similar to Ecology with regard to site access, split samples, monthly progress reports, review of Pope's records, and notice of proposed and adopted amendments and extension requests, among other things. The Tribal Participation Plan should also clarify that the tribes will be provided notice of and an opportunity to comment on the engineering design reports and compliance monitoring plans.	

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c. The Consent Decree must also ensure that tribal governments are kept informed and involved in compliance monitoring and periodic review of the remedial actions. In order to ensure that tribal governments are kept informed and involved in the development and implementation of the compliance monitoring of the remedial actions, the Tribal Participation Plan should establish annual tribal/Ecology cleanup progress meetings during implementation of the remedial actions, and establish a tribal/Ecology data and cleanup review meeting regarding monitoring, minor and substantial changes, and amendments. This meeting should be held every three years from the date of the commencement of the remedial action until dismissal of the Consent Decree. To further ensure that tribal governments are kept informed and involved in the development and implementation of the remedial actions, and due to the high level of sediment displacement and the sensitivity of the shellfish beds to the impacts of remedial actions, the Consent Decree should include a requirement in the "Periodic Review" section that periodic review meetings be held on an annual basis for the first five years after the initiation of cleanup action, and then every five years thereafter. Finally, to ensure adequate and long-term tribal participation, the Consent Decree should include an express statement in the "Duration of Decree" section that the "Periodic Review" and "Tribal Participation Plan" sections shall survive dismissal of the Consent Decree by the Court.	
Comment #2.7 Section IV suggests the use of specific institutional controls that should be included in the Cleanup Documents and that should be made subject to public review and comment. **IV. The Consent Decree must include institutional controls.** Ecology has determined that "institutional controls are required" to ensure the long-term effectiveness of soil caps. See, e.g., DCAP at 30, 35.	The Consent Decree and Cleanup Action Plan identify required institutional controls, which include restrictive covenants. See response to Comment #1.3.

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Where Ecology has made this determination, institutional controls are required pursuant to WAC 173-340-440(4)(g). Institutional controls "are measures undertaken to limit or prohibit activities that may interfere with the integrity of an interim action or cleanup action or that may result in exposure to hazardous substances at a site" and include physical measures, use restrictions, maintenance requirements, and educational measures. WAC 173-340-440(1). The Consent Decree should be revised to include the institutional controls required for the Property. These controls should consist of land use restrictions that run with the land and that (1) provide for ongoing monitoring and maintenance of sediment caps; (2) provide notice to prospective purchasers that the Property is the site of a cleanup action and is subject to restrictive covenants; and (3) prohibit excavation of the Property without prior notice to Ecology and interested tribes and approval from Ecology. These land use restrictions should be addressed in a "Transfer of Interest of Property" section of the Consent Decree, and in a Restrictive Covenant attached as an exhibit to the Draft Decree in final or substantially final form. The Consent Decree should also include institutional controls in the form of site access restrictions to prevent or discourage people from exposing themselves to the contaminated area and to protect the sediment caps from disturbance. These site access restrictions should include (1) a prohibition on physical disturbance of sediment caps through activities such as pile driving, drilling, anchoring, and earthwork through a zoning overlay specific to the Property; (2) a requirement that Pope provide off-shore signage alerting boaters of the cleanup status of the Property, the Property location, and the related prohibition on disturbing subtidal and intertidal sediments at the Property; and (3) a requirement that Pope provide shoreside signage and educational material discouraging disturbance of the caps by visitors.	
Comment #2.8 Section V of these comments recommends	Ecology retains full MTCA and SMS authority in overseeing the proper conduct and timely

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stronger reopener language **V. The Consent Decree needs a strong reopener.** The Draft Decree includes a standard reopener provision, but the high sensitivity of the Bay's shellfish beds to contaminants and the significant amount of subtidal sediment to be dredged compel the inclusion of additional specific reopener provisions designed to protect the Bay from resuspension of toxicants and recontamination during cleanup implementation. This issue can be addressed by adding the following paragraph to the reopener section of the "Covenant Not to Sue" provision in the Draft Decree: Ecology also specifically reserves the right to stop ongoing remedial actions and re-evaluate cleanup technology or implementation methods when monitoring sampling reveals a level of contaminants that exceeds applicable state or federal water quality criteria or when paralytic shellfish poisoning samples in or immediately adjacent to the Bay exceed the U.S. Food and Drug Administration's allowable limit of 80 micrograms per 100 grams of tissue. Additionally, to ensure that the cleanup is progressing in a timely manner, cleanup standards should be clearly stated in the CAP and should be tied to specific two- or three-year benchmarks. In the event those benchmarks are not met, the reopener in Section XVIII.B.4 should be triggered. This connection can more clearly be articulated through the insertion of the following **bold underlined** language in Section XVIII.B.4: 4. Upon Ecology's determination that additional remedial actions are necessary to achieve cleanup standards within the reasonable restoration time frame **and according to the specific benchmarks** set forth in the CAP.	completion of the cleanup action. The level of detail presented in this comment are appropriate for the engineering design report (EDR), which will include a detailed schedule for carrying out the actual cleanup and the operation, maintenance and monitoring plan that will detail the monitoring schedule, metrics to be analyzed, benchmarks to be achieved, triggers for when to implement contingency actions and clear definition of scope and nature of contingency actions. These become integral and enforceable parts of the Consent Decree. The boilerplate language included in the Consent Decree is only modified to address unique circumstances, and the shellfish and proposed dredging in Port Gamble do not present unique circumstances. See response to Comment 2.4 for more information on design considerations for monitoring plans.
Comment #2.9 Section VI of these comments suggests clarifying language in the Consent Decree that acknowledges	Natural resource damage (NRD) is not addressed by the Consent Decree and is part of a separate process. The Consent Decree does not direct the

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the separation between this proposed State interim action and any tribal or federal claim or action. **VI. The Consent Decree must be crystal clear that tribal and federal natural resource damage ("NRD") claims are preserved and are not affected by the State's cleanup settlement.** The introduction to the Draft Decree should be revised to clarify that tribal and federal NRD claims are preserved and are not compromised or affected by the State's cleanup settlement, especially with regards to claims for injuries to tribal fisheries resources. This can be done by adding the following language: "This Decree does not cover any injury to the lands, waters, fisheries or other natural resources of any Indian tribe, nor does it affect any remediation or natural resource damage liability the Defendants or any PLP not party to this Decree may have to any Indian tribe or to any federal agency." The "Covenant Not to Sue" section of the Draft Decree should also be revised to reflect that the Draft Decree has no relation to tribal and federal claims through the use of the following language: "This Covenant Not to Sue shall have no applicability whatsoever to: . . . 4. Any tribal or federal actions."	NRD process and does not settle any NRD liability.
#3 Rory O'Rourke, Port Gamble S'Klallam Tribe (Testimony)	
Comment #3 My name is Rory O'Rourke, and I'm speaking on behalf of Port Gamble Bay S'Klallam Tribe Natural Resources Department. Obviously, the Tribe is glad that the cleanup is moving forward and that Ecology has cleaned -- has improved its cleanup plans over the past several years, but the current cleanup plans remain inadequate. The Tribe lives on the bay, and its members eat food from the bay every day, including food that is in or exposed to the contaminated sediment, such as shellfish and bottom fish. Tribal membership thus faces the highest risk of exposure, and its members likely have or will suffer higher rates of cancer and	Ecology appreciates the feedback offered through your comments. The comments correspond with comments received in other letters from the Port Gamble S'Klallam Tribe and responses refer to those. Please see response to Comment #1.1 for more information about the cleanup decision for SMA-5. Ecology recognizes the importance of the bay to the Port Gamble S'Klallam Tribe given the daily harvest dependence you reference for the tribe. We based cleanup decisions for the entire site on exposure assumptions for subsistence fishers. See response to Comment #1.9 and #1.6 for information about dredging operations and

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related deaths than the general population caused by the contamination from the Pope sawmill. Thus leaving huge swaths of contaminated areas unremediated because the cost of cleanup is high, is simply not an adequate solution for the Tribe. For example, all of SMA is currently designated for monitored natural recovery. However, EPA recommends against monitored natural recovery for areas where subsistence consumers harvest their food because the recovery time period is too long to sufficiently protect the health of subsistence consumers. Ecology expects this area to take at least 20 to 25 years to recover in response to comments that were made to the RI/FS. There are pockets of SMA-5 with levels of PAHs and dioxins that exceed natural background. Therefore, portions of SMA-5 need an additional SMA, or an SMA needs to be expanded, so that these areas can be addressed through enhanced monitored natural recovery. Enhanced monitored natural recovery is less invasive than dredging and will allow the area to recover in a faster time frame. Also, there will be minimal damage to benthic organisms and geoduck. EMNR, which is enhanced monitored natural recovery, was rated higher than monitored natural recovery in the feasibility study and CAP but was disregarded due to higher costs and being deemed impracticable. If parts -- if parts of SMA-5 are not addressed through enhanced monitored natural recovery and the current plan remains the same, the contamination must be addressed through a sediment recovery zone pursuant to the new sediment management standards entered into this year. A sediment recovery zone is a restricted area that takes into account human health risks and tries to accelerate the recovery time frame by minimizing any areas left for natural recovery. As another measure to protect human health among tribal membership, Ecology and Pope should use technology that will minimize the	monitoring.

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resuspension of contaminants during dredging. This includes the use of sediment curtains, silt fencing, and suction dredging, all of which will lower the risk of creating a plume that could affect the shellfish that tribal members subsist on and make a living harvesting. This also includes turbidity monitoring which will allow scientists to track the amount of sediment churned up from dredging and shellfish monitoring, which is necessary to measure contaminants in shellfish and reduce exposure from the dredging plume pathway.	
Rory O'Rourke, Port Gamble S'Klallam Tribe (Letter submitted at the public hearing)	
Comment #4 Port Gamble S'Klallam Tribe Copy of Comments at October 29, 2013 Public Hearing (Written comments will be provided by the November 12,2013 deadline) 1. In the previous version of the CAP, the cleanup of the mill site and Bay was characterized as an "interim action" rather than a final cleanup action. This made sense because the discovery of contaminants in soil samples from the upland areas of the mill site and shoreline expanded the reach of the cleanup site to a yet undefined area that would be addressed in a future final cleanup action. Nothing has changed to clarify the boundaries of the site, and the newly discovered contaminants are not addressed in the Partial RI/FS or the current draft consent decree and draft CAP. Hence the proposed cleanup is only partial and so should be properly designated an interim action, which as described in WAC 173-340-430 "partially	Ecology appreciates the feedback offered through your comments. The comments correspond with comments received in other letters from the Port Gamble S'Klallam Tribe and responses refer to those. 1. See response to Comment #1.2 regarding your comment about the interim action and Ecology's commitment to cleanup of the upland portions of the Site. 2. See response to Comment #1.3 for information about restrictive covenants and institutional controls. 3 and 4. See response to Comment #1.1 for information about cleanup decisions for SMA-5. 5. See response to Comment #1.9 for information about operations and BMPs for dredging.

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addresses the cleanup of a site" as the consent decree and CAP here will. In selecting a final cleanup action, Ecology would be required by WAC 173-340-360(2)(b) to "[u]se permanent solutions to the maximum extent practicable," which is not the case here where the proposed solution is not permanent for the full site and the full scope of toxics. Therefore, we recommend that the introduction of the Consent Decree be revised to reflect that it addresses an interim action, not a final cleanup action. We fully expect Ecology to address cleanup of the upland areas under a separate consent decree and CAP. If Ecology and Pope require a final consent decree and CAP for the cleanup to proceed, the RI/FS should be completed and the consent decree and CAP should be revised to cover the full site and the full scope of hazardous substances released at the site. 2. The CD must include institutional controls to protect the integrity of the cleanup actions and to ensure the success of the capping remediation over time. Institutional controls should include site access restrictions to prevent or discourage people from exposing themselves to the contaminated area and to protect the integrity of the sediment caps. Institutional controls should also include land use restrictions that ensure ongoing monitoring and maintenance of the sediment caps and that prohibit any physical disturbance of the caps. Therefore, we recommend that the Consent Decree include a	

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detailed description of both site access restrictions and land use restrictions and a clear timeframe for their implementation. 3. The Tribe is glad the cleanup is moving forward, and that Ecology has improved its cleanup plans over the past several years, but the current cleanup plans remain inadequate. The Tribe lives on the Bay and its members eat food from the Bay every day, including food that is in or exposed to the contaminated sediment, such as shellfish and bottomfish. Tribal membership thus faces the highest risk of exposure, and its members likely have or will suffer higher rates of cancer and related deaths due caused by the contamination from the Pope sawmill. Thus, leaving huge swaths of contaminated areas unremediated because the cost of cleanup is high is simply not an adequate solution for the Tribe. 4. For example, all of SMA-5 is currently designated for monitored natural recovery, which means no action will be completed in that area except for monitoring. However, EPA recommends against monitored natural recovery (MNR) for areas where subsistence consumers harvest their food because the recovery time period is too long to sufficiently protect the health of subsistence consumers. Ecology expects this area to take at least 20 years to recover. There are pockets of SMA-5 with levels of PAHs and dioxins that exceed natural background. Therefore,	

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portions of SMA-5 need an additional SMA, or an SMA needs to be expanded, so that these areas can be addressed through *enhanced monitored natural recovery* (EMNR). EMNR is less invasive than dredging, and will allow the area to recover in a faster time frame. Also, there will be minimal damage to benthic organisms and geoduck. EMNR was rated higher than MNR in the Feasibility Study and CAP, but was disregarded due to higher costs and being deemed impracticable. If parts of SMA-5 are not addressed through EMNR, the contamination must be addressed through a sediment recovery zone pursuant to WAC 173-204-570 and -590. A sediment recovery zone is a restricted area that takes into account human health risks and tries to accelerate the recovery timeframe by minimizing any areas left for natural recovery. 5. As another measure to protect human health among tribal membership, Ecology and Pope should use technology that will minimize the resuspension of contaminants during dredging. This includes use of sediment curtains and suction dredging, both of which will lower the risk of creating a plume that could affect the shellfish that tribal members subsist on and make a living harvesting. This also includes turbidity monitoring, which will allow scientists to track the amount of sediment churned up from dredging, and shellfish monitoring, which is necessary to measure contaminants in shellfish and to reduce exposure from the dredging plume	

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pathway.	
Roma Call, Port Gamble S'Klallam Tribe (Public testimony)	
Comment #5 I'd like to start out by thanking Ecology and Pope Resources for the work you've done on the Cleanup Action Plan and Consent Decree. This is a much improved cleanup plan, but we have a couple remaining issues we ask you to address in the final documents. First, in the previous version of the CAP, the cleanup of the mill site was characterized as an interim action rather than a final cleanup action. And this made sense because the discovery of contaminated soil in upland areas from the mill site and the shoreline expanded the reach of the cleanup site to a yet undefined area that would be addressed in a future final cleanup action. Nothing has changed to clarify the boundary of the site and newly discovered contaminants are not addressed in the current draft Consent Decree and draft CAP. Hence the proposed cleanup is only partial and so should be probably defined an interim action. Therefore, we recommend that the introduction of the Consent Decree be revised to reflect the addressed interim action and not a final cleanup action. We fully expect Ecology to address cleanup of the upland areas under a separate Consent Decree and CAP. And if Ecology is hoping for a final Consent Decree and CAP for this cleanup to proceed, the RI/FS should be completed and a Consent Decree and CAP should be designed to cover the full site and the full scope of the hazardous substances. Second, the Consent Decree must include institutional controls that were mentioned earlier to protect the integrity of the cleanup action and to ensure the success of CAP remediation over	Ecology appreciates the feedback offered through your comments. The comments correspond with comments received in other letters from the Port Gamble S'Klallam Tribe and responses refer to those. See response to Comment #1.2 regarding your comment about the interim action and Ecology's commitment to cleanup of the upland portions of the Site. See response to Comment #1.3 for information about restrictive covenants and institutional controls. See response to Comment #1.1 for information about cleanup decisions for SMA-5. See response to Comment #1.9 for information about operations and BMPs for dredging.

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time. Institutional controls should include site access restrictions designed to keep people from exposing themselves to the contaminated area and to protect the integrity of the sediment CAPs. Institutional controls should also use -- include land-use restrictions that ensure ongoing monitoring and maintenance of the sediment CAPs and prohibit any physical disturbance of the CAPs. Therefore, we advise this Consent Decree include a detailed description of both site access restrictions and land-use restrictions and a clear time frame for their implementation. Thank you for your work on the cleanup of Port Gamble Bay and Mill Site.	
#6 Alison O'Sullivan, Suquamish Tribe (Letter dated November 12, 2013)	
Introductory Comment: The Suquamish Tribe ("Tribe") has reviewed the above referenced documents and is transmitting its comments and concerns regarding the above referenced documents. Port Gamble, including Port Gamble Bay, is located within the Tribe's adjudicated usual and accustomed fishing area ("U&A") and within the ancestral territory of the Tribe. The Tribe's ancestors have occupied the Kitsap Peninsula and surrounding areas of Admiralty Inlet, Hood Canal, and Puget Sound since early post-glacial times, over the past 14,000 years. The Tribe seeks protection of all treaty-reserved natural resources through avoidance of impacts to habitat and natural systems.	Thank you for the information.
Comment #6.1 **Concerns about advance mitigation.** **Page 3-9.** Advance mitigation cannot be used if the pilings intended for mitigation for construction of a new dock structure are part of cleanup activities. No other detailed information regarding a mitigation plan that will adequately offset impacts was provided when the dock application was submitted. Environmental impacts cannot be assessed if there is no mitigation plan showing	Ecology recognizes your concerns but both advance mitigation and replacement or construction of a new dock is outside the scope of the cleanup project.

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what impacts are anticipated and how exactly they will be mitigated for. For more detail on Tribal concems regarding the proposed dock project please see comments submitted by the Port Gamble Sklallam Tribe, the Point No Point Treaty Council and the Suquamish Tribe on Kitsap County Port Gamble Dock Shoreline Substantial Development Permit (09-87209) and Shoreline Variance (09-87210).	
Comment #6.1a Page 6. Dredging utilizing a clamshell bucket has the potential for significantly more impacts from waste suspension. These impacts may affect not only the environment but may also impede Tribal fishing activities and damage equipment. The Tribe requests that impacts be minimized to the extent possible including but not limited to use of suction dredging, sediment curtains, and silt fencing.	Dredging will be conducted using operational best management practices that minimize water quality impacts. Water quality will be monitored to verify that these operations and practices are protective. The engineering design may identify specific dredging equipment and methods to be used during cleanup operations, and will include detailed construction monitoring plans. The engineering design will also include a detailed evaluation of potential impacts to shellfish resulting from dredging. Ecology will discuss dredging methodology with tribes and others and identify ways to minimize impacts to harvesting activities when the plan is developed. Ecology plans to host a workshop as this planning ensues to engage tribes, agencies and other Ecology staff to discuss environmental dredging methods.
Comment #6.1b Page 6-7. Cap material is only generally discussed and detailed information has been deferred to the design phase and ENR material is described as silt/sand, coarse sand, gravel, cobbles, and larger material as appropriate. It is preferable and appropriate to place material with physical characteristics similar to existing sediments. Use of material that is larger than native sediments with the intention of creating "stability" is not supported by the Tribe. It should not be assumed that covering riprap armour with habitat mix will create a "habitat layer" and be acceptable. Please note that any cap will need provisions for biologic monitoring and maintenance as a remedy	See response to Comment #1.5. Cap design must satisfy several goals including providing appropriate habitat and specific design will be developed during engineering design.

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component. If larger than native material is used mitigation will be required.	
Comment #6.2 **Need for updated surveys.** **Page 13 - 4(a).** The Eelgrass and Macroalgae Habitat Survey (dated 2007)is 6 years old. A new survey needs to be completed.	Ecology recognizes the importance of working with up to date information to avoid impacts to the resources during cleanup construction. Ecology will work with permitting agencies and tribes during engineering design.
Comment #6.3 **Including tribes in mitigation planning.** **Page 14 - 4(d).** Any discussion of appropriate mitigation must include the Tribes.	Ecology will discuss appropriate mitigation with tribes and resource agencies during its decision making process.
Comment #6.4 **Effects of contamination on forage fish.** **Page 14-5.** Lack of observed forage fish spawning does not mean that they are not there or will not use the site in the future. Forage fish are extremely sensitive to PAH's so there could be a suppression effect due to contamination or impacts to appropriate substrate due to wood waste.	Thank you for this information. Ecology recognizes the sensitivity of forage fish to contaminants and will be taking this into account in all aspects of the cleanup and monitoring.
Comment #6.5 **Presence of critical habitat for juvenile Chinook.** **Page 14 - 5(a).** Although spawning may not occur in the small streams within the bay the nearshore areas are utilized by juvenile Chinook and identified as critical habitat by NMFS.	Thank you for your comment. See response to Comment #6.4 for additional information on establishing work windows.
Comment #6.6 **Presence of marbled murrelets in Port Gamble Bay.** **Page 14 - 5(a).** Text stating marbled murrelets have not been observed in the vicinity is erroneous. Please correct text. Port Gamble bay is one of the few areas that marbled murrelets have been observed foraging for food. Observations were documented by Kitsap Audubon members in2012. How will the proposed cleanup and the addition of considerably more boat traffic affect these birds?	Ecology recognizes the importance of protecting these birds and their habitat. Marbled murrelets are included in the Biological Assessment and Joint Aquatic Resources Permit Application (JARPA) package for the cleanup project. Potential impacts to this species and its habitat will be evaluated by the United States Fish and Wildlife Service (USFWS) as part of Endangered Species Act (ESA) consultation.
Comment #6.7 **Presence of marbled murrelets in Port Gamble Bay.** **Page 14 - Table 2.** Add marbled murrelets.	Marbled murrelets are included in Table 2.
Comment #6.8	The intent of the paragraph is to describe that Port Gamble Bay is within the Pacific flyway for many

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Complete listing of migratory birds using Port Gamble Bay. **Page 15 - 5(c).** Migratory birds utilizing the bay are not limited to ducks and geese. Please revise text for accuracy. Consult with Kitsap Audubon if needed.	species of migratory birds including geese and ducks.
Comment #6.9 **Timing of work windows.** **Page 16 - 5(d).** The proposed work window of July 16 through February 15 is also not protective of juvenile Chinook (February through September) or juvenile summer chum (January through June).	We are working to ensure that the cleanup construction occurs during times of least impact as well as minimizes impacts by limiting the overall duration of cleanup construction. The cleanup project will be implemented in accordance with in-water work windows established by USACE and WDFW, intended to limit harm to salmonids. See response to Comment # 1.12 for additional information. During the permitting process, Ecology will coordinate and consult with the tribes to determine the most efficient means to achieve the project goals and objectives while balancing tribal concerns about resources and harvesting periods.
Comment #6.10 **Page 18 -8 (a).** Shoreline uses need to include Tribal uses of federally recognized Tribes with U&A in and around Port Gamble Bay.	This comment relates to the SEPA checklist. The referenced section addresses current uses of the shoreline, including shellfish harvest. Current and historic uses of the shoreline by tribes are referenced in Section 13, p. 21-22. Ecology considered tribal uses in the CAP.
Comment #6.11 **Page 19 - 8(d).** See comments above regarding advance mitigation and the proposed Port Gamble dock.	Advance mitigation and dock construction is not within the scope of the cleanup project.
Comment #6.12 **Page 22 - 13.** Include all federally recognized Tribes with U&A in Port Gamble Bay and surrounding area. See also text below under Cultural Resource Assessment Plan.	We recognize and have given consideration to this in developing the remedial action.
Comment #6.13 **Concerns regarding the success of the remedy.** **II. Draft Port Gamble Bay Cleanup Action Plan** Washington State Department of Ecology (Ecology) intends for this remedy to be the final remedy for the Port Gamble Bay Cleanup. Given the high degree of uncertainty that the remedy will be successful in achieving all of the remedial action	Ecology prepared and issued a PRI/FS that evaluated remedial alternatives for the bay. Ecology selected a cleanup action that is protective of human health and the environment, permanent to the maximum extent practicable and provides for a reasonable restoration timeframe. See response to Comment #1.1 for additional information.

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objectives in the required timeframe the CAP does not provide justification for why this alternative would be considered the final remedy.	
Comment #6.14 **Use of institutional controls** The use of Institutional Controls (ICs) should be minimized to the extent possible. Institutional controls need to be a temporary solution with eventual clean up and should not be considered remediation measures or long term remedies. ICs must consider impacts to treaty protected rights to harvest in usual and accustomed areas. The Tribe does not consider limitation of treaty rights to be "positive behavior change" and informational devices are not considered effective or practical for subsistence harvesters. ICs such as fish advisories, environmental covenants and restricted navigation areas are not enforceable nor are they within the jurisdiction of the responsible parties to implement. Fish advisories cannot be used to achieve risk reduction objectives by "limiting fish and shellfish consumption". ICs do not protect human health, which requires achievement of protective levels through the reduction of contaminant levels in sediment. Development of an IC plan should be done in coordination with affected Tribes to ensure Tribal Treaty resources and harvest activities are respected.	The CD and CAP require institutional controls including restrictive covenants. During the engineering design phase of cleanup, Ecology will work with tribes and others to determine the precise institutional controls that will be required to ensure the long-term integrity and protectiveness of specific cleanup elements such as sediment caps and to minimize impacts to harvest and other tribal activities.
Comment #6.15 Caps interfere with the exercise of Tribal treaty fishing rights and other treaty protected rights. There is no discussion in the RI/FS or the CAP regarding this issue. Caps in intertidal areas and areas that may be potential habitat for geoduck must be of sufficient depth to provide clean, suitable substrate for the clams to live in. For example, enhanced natural recovery (ENR) of 6 inches in these areas would not be adequately protective based on the depth of exposure.	As discussed in the Cleanup Action Plan, cap and enhanced natural recovery designs will be protective of human health and the environment and allow for harvesting of shellfish. The enhanced natural recovery layer will accelerate natural recovery processes and is not intended to isolate contaminants.
Comment #6.16 **Concern about use of MNR.** The Tribe does not support the predominant use of monitored natural recovery ("MNR") and/or enhanced monitored natural recovery @MNR) as a	Ecology prepared and issued a PRI/FS report that evaluated remedial alternatives for the bay. Ecology selected a cleanup action that is protective of human health and the environment, permanent to the maximum extent practicable and provides

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selected remedy. WAC t73-340-370(7) states, "The department expects that natural attenuation of hazardous substances may be appropriate at sites where: (a) Source control (including the removal and/or treatment of hazardous substances) has been conducted to the maximum extent practicable; (b) Leaving contaminants on-site during the restoration time frame does not pose an unacceptable threat to human health and the environment ..." Cleanup actions shall prevent or minimize present and future releases and migration of hazardous substances in the environment (WAC 173-340-360(2X0). A cleanup action shall use permanent solutions to the maximum extent practicable" (WAC 173-340-360 (2) (b) (i)). Residual risks will continue to have a disproportional impact on tribal communities. It is not clear how environmental justice issues were considered in the development and evaluation of the preferred alternative. How will the preferred alternative address disproportionate impacts to tribal health and resources?	for a reasonable restoration timeframe. The human health assessment and cleanup standards were developed using tribal consumption rates to understand potential impacts and consider all factors in making a cleanup decision. We have and will continue to engage tribes in discussions during development of the engineering design to understand potential impacts to tribal communities and look for additional ways to minimize risk. See response to Comment #1.1 for additional information.
Comment #6.17 **Continue tribal consultation during final remedy design.** The CAP provides only a preliminary discussion of a remedial action. The final remedy design will occur after the consent decree has been signed and the CAP finalized. It is crucial that Ecology continue to consult with the Suquamish Tribe throughout the remedial design and implementation process. The Suquamish Tribe expects to have meaningful input in the development and review of work plans, sampling and analysis plans, data reports, monitoring plans and modeling efforts conducted as part of the remedial design and implementation.	Ecology follows a process at this site to coordinate and consult with tribes early and throughout the cleanup process. This includes regular updates and technical meetings. Ecology will continue to do so throughout the cleanup including when developing the engineering design. Ecology acknowledges your comment and will continue to engage with Suquamish and other tribes during the engineering design phase as plans are being developed and the cleanup is conducted. This will include project and technical meetings. Ecology has considered the request to provide more specific detail describing how Ecology will engage tribes during the coming stages in the cleanup action, including permitting, design and implementation. Ecology takes seriously its responsibility to engage tribes in the planning and decision making process and values the

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	opportunity. We will work with you as we develop a plan for involving tribes during the engineering design and cleanup.
Comment #6.18 **Include all affected federally recognized tribes** **Page ES-1 Site Background.** Text must include all affected federally recognized Tribes (including Suquamish) that have U& A within the project area. The way it is stated it implies that only the Port Gamble Sklallam Tribe has fishing rights in Port Gamble Bay. **Section 1.1 - Page 1.** Text must include discussion of Suquamish use of the area. See text below in Cultural Resources Assessment Plan.	The text was not intended to exclude Suquamish or other Tribes. We have considered this in developing the remedial action. Ecology does not plan to revise the CAP but acknowledges your expressed interest in the area and will continue to work with all tribes during engineering design and implementation.
Comment #6.19 **Ensure cleanup action objectives are protective of human health.** **Section 3.3. - Page 11.** Sediment cleanup action objectives must be protective of human health. The cleanup action plan only uses SMS threshold levels even though SMS only generally requires "no significant human health threats." SMS/SQS are designed to be protective of benthic organisms (the environment) not human health.	The sediment cleanup levels (SCL) established for Port Gamble Bay are protective of human health. These SCLs are the lowest value of either the benthic, ecological or human health standards. For Port Gamble Bay, the established SCLs were based on human health. Following the active remediation described in the CAP, risk to human health will be lower than the risk associated with natural background concentrations.
Comment #6.20 **Section 3.4.6 - Page 15.** Ecology is considering revising the marine water quality standards. How is this change going to be incorporated into the cleanup?	The current state marine water quality standards are included in this cleanup as applicable state or federal laws per MTCA. Future revisions are not included as a requirement in this agreement.
Comment #6.21 **Section 4.** The restoration timeframe references may be skewed by inaccurate assumptions concerning sedimentation rates, since there are significant uncertainties surrounding sediment transport rates.	The rate of sedimentation is an estimate and will be further evaluated during engineering design.
Comment #6.22 **Impacts of dredging activities.** **Section 4.** Dredging utilizing a clamshell bucket has the potential for significantly more impacts from	Dredging will be conducted using operations and best management practices that minimize water quality impacts. Water quality will be monitored to verify that these operations and practices are

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waste suspension. These impacts may affect not only the environment but may also impede Tribal fishing activities and damage equipment. The Tribe requests that impacts be minimized to the extent possible including but not limited to use of suction dredging, sediment curtains, and silt fencing.	protective. The engineering design may identify specific dredging equipment and methods to be used during cleanup operations, and will include detailed construction monitoring plans. The engineering design will also include a detailed evaluation of potential impacts to shellfish resulting from dredging. Ecology will discuss dredging methodology with tribes and others and identify ways to minimize impacts to harvesting activities when the plan is developed.
Comment #6.23 **Impacts of steep slopes.** **Section 4.2.** Text needs to discuss steep slopes in the vicinity of the mill site and how this will relate to selection of an appropriate remedy. There is concern with capping that material will not stay in place unless slopes are reduced. Simply adding rip rap will not be an acceptable solution.	Ecology will design slope treatments and review shoreline stability during the engineering design phase, considering habitat as well as structural issues.
Comment #6.24 **Section 4.2 -Page 20.** Determination of cap thickness and composition needs to occur in consultation with affected Tribes.	Ecology will continue to engage with tribes during engineering design as plans are being developed. Ecology will work to ensure that the cleanup project is coordinated with tribal resource harvesting and other activities on the bay, and provide updates on the progress of the cleanup project.
Comment #6.25 **Design of sampling and monitoring.** **Section 4.7 * Page 24.** There is no information on monitoring to indicate how it will be carried out. Sampling should be discrete samples not composite. If composite samples are used there will only be a site average for contamination. There will be no way to identify where residual contamination is and where contingency actions are needed.	Monitoring details will be developed during engineering design.
Comment #6.26 **Selection of cleanup remedy.** **Table 5-1.** The weighting factors established in the RVFS as percent of the numeric benefit analysis are: (1) Short-term effectiveness - 10%; (2) Long-term effectiveness -30%; (3) Implementability-20%;() Cost - 25%;(5) consideration of public concerns (this includes tribes);Use of Recycling, Reuse, and Waste Minimization- So/o; and Consideration of Environmental lmpacts. This table	MNR and EMNR were selected on the basis of all criteria as described in the FS. Cost is only one of the criteria considered.

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shows that the selection of MNR/EMNR is primarily based on cost rather than protection of human health and/or addressing tribal concerns.	
Comment #6.27 **Effects of the remedial action on tribal fishers.** **Table 5-1.** The short-term and long term effects of remedial actions should take into account the costs to tribal fishers if disturbances in the waterway impact the abundance of fish available or the ability of Tribal fishermen to access their fishing areas. It is not clear how this was incorporated and/or evaluated. How will potential gear damage be addressed? With increased vessel traffic in an enclosed/constrained area the potential for gear damage increases significantly.	There will be temporary impacts to fishing activities during construction. Ecology will work with tribes to develop measures to avoid and minimize harvest disruption or other impacts.
Comment #6.28 **Evaluation of alternatives** **Table 5-1.** Evaluation of alternatives fails to include/address future uses including potential increased tribal (and non-tribal) harvesting of fish or shellfish with habitat improvements as well as increased recreational use of these areas.	Ecology considered the benefits to habitat when evaluating alternatives. These benefits also support the natural resources harvested by tribes and others.
Comment #6.29 **Include repair/replacement provisions.** Table 5-1. All alternatives (including the preferred alternative) should include repair/replacement provisions should damage occur.	Maintaining integrity of the cleanup remedy is a standard requirement for site remediation. The long-term operations, monitoring and maintenance plan, to be developed during engineering design, will include provisions requiring maintenance and/or replacement, as appropriate, to repair damage.
Comment #6.30 **Disproportionate cost analysis.** **Section 6 - Page 56.** The MTCA disproportionate cost analysis ("DCA"), WAC 173-340- 360 was used to evaluate which of the alternatives meet the threshold requirements to be protective to the maximum extent practicable. However, it appears that a higher importance is placed on costs versus protection of human health and consideration of tribal concerns.	Cost is one of many factors considered when selecting a cleanup remedy. However, protection of human health is a threshold criterion and is also considered under several of the other criteria. As a result, protection of human health has a greater consideration than overall cost.
Comment #6.31 **Evaluating tissue concentrations.** **Section 7.** If sediment concentrations are reduced, but tissue concentrations remain elevated, the site has not been cleaned up to address risks to human health. There is uncertainty regarding the	Ecology will consider sampling approaches and evaluation of sedimentation and natural recovery during engineering design. Ecology will also consider monitoring sediment and tissue concentrations.

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Sediment Transport Model which may overestimate natural recovery and the depositional nature of the bay. There need to be goals related to concentrations in tissue, not just sediment. In addition, sediment traps can be used to verify assumptions made regarding sediment transport and better refine recovery timelines.	
Comment #6.32 **Including in finding of fact.** **Section V.** FINDING OF FACT omits a substantive fact that the Suquamish Tribe and other federally recognized Indian Tribes have federally adjudicated usual and accustomed fishing grounds and stations U&A) within Port Gamble Bay. The area identified in Exhibit B as the Site and Property Diagram is within the Suquamish Tribe's U&A.	The purposes of the Findings of Fact Section is to state facts concerning the following topics: (1) a release or threatened release of hazardous substances at a facility that presents a threat to human health and the environment, (2) that remedial action is thereby required, (3)identity the Site, and (4) status of the Defendants as potentially liable persons. It is not intended to address tribal U & A rights.
Comment #6.33 **Section XXIII. COMPLIANCE WITH APPLICABLE LAWS.** This section requires that all actions carried out by Defendants pursuant to the Consent Decree shall be done in accordance with all applicable federal, state, and local requirements. This section should add a clarifying provision that places requirements on both the Defendants and the State of Washington that any and all actions performed under this Consent Decree shall not conflict with or prohibit the Tribe from exercising its federal treaty-reserved fishing rights in Port Gamble Bay.	Ecology recognizes the importance of complying with applicable federal, state, and local requirements as required by MTCA and SEPA. Ecology also will work to ensure that the cleanup project is coordinated with tribal resource harvesting and other activities on the bay.
Comment #6.34 **SECTION XX. LAND USE RESTRICTIONS.** Please note that land use restrictions do not exclude any federally recognized Tribe with U&A in Port Gamble Bay from exercising its treaty rights. We request the addition of a clarifying provision that places requirements on both the Defendants and the State of Washington that any and all actions performed under this Consent Decree shall not conflict with or prohibit the Tribe from exercising its federal treaty-reserved fishing rights in Port Gamble Bay.	Ecology will work to ensure that the cleanup project is coordinated with tribal resource harvesting and other activities on the bay.

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Comment #6.35 **Tribal coordination during cultural resources assessment.** **CR Assessment Plan.** The FS states, "A bay-wide cultural resources overview was developed for Port Gamble Bay to identify and map areas ofknown or possible historical, archaeological, and cultural resources within the project area. The overview was developed by a professional archaeologist for OPG, WDNR, and the Port Gamble S'Klallam Tribe and provided ...." The Suquamish Tribe has treaty protected cultural resources in Port Gamble and Port Gamble Bay but has been excluded from this process. What assurances does the Suquamish Tribe have that coordination will occur?	The Cultural Resources Assessment Plan (CRA-Plan) attached to the CAP describes the process that will be used to conduct a full cultural resources assessment. The process includes consultation with interested tribes, including the Suquamish Tribe. The initial cultural resources overview referred to in the comments was conducted as a focused effort to identify data gaps and steps to be taken for a comprehensive assessment. It was not intended to exclude other tribes and did include the tribe that is located and living directly adjacent to the cleanup site. Ecology has coordinated with five interested tribes, including the Suquamish Tribe throughout the PRI/FS process and CAP. This includes involvement during development of the CRA-Plan. Tribal Historic Preservation Officer Dennis Lewarch provided comments on the CRA-Plan on January 7, 2013. Some of the Tribes' comments were directly incorporated into the CRA-Plan where applicable. The CRA-Plan commits Ecology to ongoing consultation with the Suquamish Tribe (as well as other tribes) on cultural resources issues. The forthcoming Cultural Resources Study Plan will be submitted to USACE as part of the Section 106 process and it will be the responsibility of USACE to consult with the Suquamish Tribe as part of that process.
Comment #6.36 **Suquamish tribal history.** As stated in previous comment letters: Port Gamble is within the Adjudicated Usual and Accustomed Fishing Area of the Suquamish Tribe and within the Ancestral Territory of the Tribe. Suquamish Ancestors have occupied the Kitsap Peninsula and surrounding areas of Admiralty Inlet, Hood Canal, and Puget Sound since early post-glacial times, over the past 14,000 years. Ethnographic and historic data demonstrate the Suquamish People were at the north end of Hood Canal, including Port Gamble, until the early 1850s,	Thank you for describing the Suquamish Tribe's history in the project area. Also see response to comment 6.35

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when the Pope and Talbot lumber operations were established at Port Gamble in 1853. Hudson's Bay Company records from the 1820s to the 1840s, United States Exploring Expedition records from 1841, and Catholic Archdiocese records from the 1830s through the 1870s refer to Suquamish villages at Ebey's Prairie on Whidbey Island, at Point No Point at the north end of the Kitsap Peninsula, at Port Ludlow northwest of the north end of Hood Canal, and at Quilcene Bay on the west side of Hood Canal, and seasonal Suquamish encampments at Hood Head, Termination Point, and Brown's Point on the west side of Hood Canal. U.S. Exploring Expedition personnel named Suquamish Harbor at the north end of Hood Canal based on the presence of Suquamish fishing and hunting parties and villages in the area. An 1841 map produced by the U.S. Exploring Expedition shows the Suquamish at the north end of the Kitsap Peninsula and the west side of Admiralty Inlet and Hood Canal, from north of Port Ludlow to south of Suquamish Harbor. An 1855 map by the U.S. Army also placed the Suquamish on both sides of the north end of Hood Canal. Ethnographic data document pre-European contact Suquamish use of the north end of Hood Canal and indicate the S'Klallam families who settled in the Port Gamble vicinity came from Dungeness Spit on the Strait of Juan de Fuca after the Pope and Talbot lumber mill was established in 1853. Place names recorded by ethnographers between 1910 and 1940 demonstrate Suquamish use of the Port Gamble vicinity. Intensity of Suquamish use of the Port Gamble area decreased after 1853, as Tribal members focused on economic opportunities afforded by lumber mills on the east side of the Kitsap Peninsula and participated in trading, transportation, lumbering, shellfish gathering, fishing, and other commercial activities at Seattle on the east side of Admiralty Inlet. The large population and marketplace of the greater Seattle area that began in the early 1850s served as an	

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economic magnet, continuing the precontact role of the Suquamish People as regional entrepreneurs who controlled trade and other economic commerce throughout Admiralty Inlet, Hood Canal, and Puget Sound.	
Comment #6.37 In closing, the Tribe again requests that Ecology keep us informed of project status and any project related actions. Please notify us of all project related meetings with stakeholders, agencies or other Tribes (regardless if we are invited or not). If we are not included in technical meetings a separate meeting on the same material needs to be held with Suquamish.	Ecology acknowledges your comment and will continue to engage with Suquamish and other tribes during the engineering design phase as plans are being developed and the cleanup is conducted. This will include project and technical meetings.
Randy Harder, Point No Point Treaty Council (These comments were also provided in written form by Randy Harder, Executive Director of the Point No Point Treaty Council, during the public hearing on October 29, 2013.)	
Comment #7.1 **Support for cleanup.** ***Introduction.*** The Point No Point Treaty Council (PNPTC) is a tribal natural resource agency that provides natural resources and fisheries support services to the Jamestown S'Klallam and Port Gamble S'Klallam Tribes, who have Usual and Accustomed Fishing Areas in Hood Canal, including Port Gamble Bay. The PNPTC has significant in house environmental experts with experience with the fragile ecosystem of Hood Canal, including Port Gamble Bay (the Bay). The Tribes rely on the healthy habitat conditions that sustain critical finfish and shellfish populations and support fishing activities that are fundamental to the economies and cultures of tribal communities. The Tribes invest significant resources in protecting these Treaty Reserved resources and have a critical stake in seeing that all of their efforts are not hampered by harmful actions to the environment or tribal cultures. PNPTC is absolutely supportive of a full and complete cleanup and restoration of Port Gamble Bay. Port Gamble Bay is an invaluable cultural and natural resource for the Tribes and PNPTC finds	We appreciate your support for a full and complete cleanup of the Port Gamble Bay and Mill Site.

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that there are critical flaws in the SEPA MDNS, Consent Decree, and Draft Cleanup Action Plan (DCAP) that need to be addressed before the cleanup can achieve its fullest potential.	
Comment #7.2 **Impacts to the environment and shellfish harvesting.** The PNPTC adopts and incorporates the Port Gamble S'Klallam Tribe's comments submitted to Ecology on the SEPA MDNS. We share concerns regarding the treatment of the cleanup. As part of the public review, the PNPTC is looking at the SEPA MDNS that was issued for this site.1 The MDNS focuses on the "net positive effect on human health" that will result from the cleanup action and the removal of contamination from the Bay. MDNS at 1. However, Ecology then notes: "Temporary closures to shellfish harvesting beds or areas in Port Gamble Bay may be necessary during or following the cleanup action to protect human health and safety due to the presence of ... sediment disturbance associated with the cleanup action." MDNS at 7. The PNPTC is particularly concerned with the treaty rights harvest impacts associated with the disbursement of the toxins in the environment and with the particularized impact on the Port Gamble S'Klallam People. This is not a "net positive" impact if tribal economies are devastated during the cleanup action. The tribal harvest levels of shellfish in the Bay are significant and the Tribes' use of the Bay are essential for subsistence, ceremonial and commercial harvesting. For example, shellfish harvest by the Port Gamble S'Klallam Tribe in the Bay from 2010 through 2012 has averaged over 60,000 pounds of geoduck, over 15,000 dozen oysters, over 5,000 pounds of clams, and over 60,000 pounds of salmon. Here, Ecology appears to "offhand" the impact of a closure (especially the typical 36 month closure) on tribal people and their economy without a complete analysis of the risks and actions to be taken to avoid the risk.	The engineering design will include a detailed evaluation of potential impacts to shellfish and resource harvest activities resulting from dredging, and will develop appropriate operational controls and best management practices to minimize those impacts. Ecology will continue to engage the tribes on these concerns and will consider tribal input on issues that affect tribal harvest and activities in the bay. The MDNS also contains requirements that would identify, avoid, minimize or mitigate impacts for all activities related to the cleanup and calls for specific measures to protect existing natural resources including shellfish beds and cultural and historic resources. The MDNS also calls for steps such as further evaluation of operational BMPs. See comment #1.6 for information on working with DOH and monitoring shellfish. As referenced in the MDNS, a communication outreach plan will be developed before construction begins that is responsive to the needs the affected communities.

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While the PNPTC understands that a cleanup action is typically a positive net result, there are particular issues in this cleanup which, if not done to the utmost standards, have a higher potential to result in a human health impact. The DCAP notes that the SEPA analysis must be done and the "impacts from this cleanup have been identified...." DCAP at p. 12. https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=3444. However, the MDNS itself appears to contain little, if any, analysis noting the impacts from the cleanup except to warn that a human health hazard will be avoided by closure of the Bay to shellfishing. However, the impact is not avoided by closure because, under SEPA, the impact analyzed is the "probable significant adverse environmental impact." WA 197-11-330(1)(b). Here, the agency has merely jumped over the adverse environmental impact on the shellfish beds and asserted that it will avoid the human health risks by closing the contaminated bed. MDNS at 7 (closures may be necessary to protect human health and safety before or after the cleanup due to the disbursement of contaminated sediment among other risks). The PNPTC is concerned that more environmental review is necessary to identify and mitigate or avoid the potential risk to the shellfish in the first instance. Closure of the Bay is not mitigation of the impact. It merely allows the impact to occur and attempts to avoid poisoning of dozens of tribal harvesters. In this instance the MDNS merely states that there will be a net benefit. MDNS at 1. Under SEPA, however, the threshold determination "shall not balance whether the beneficial aspects outweigh the adverse impacts" and that "proposals designed to improve the environment" may also have "significant adverse impacts." WAC 197-11-330(5). Shellfish and turbidity monitoring is necessary during the cleanup to ensure that the	

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redistribution of contaminants from dredging is minimized. The current DCAP does not describe any monitoring of shellfish, even though the Port Gamble S'Klallam Tribe has frequently requested that Ecology work with the Department of Health to develop a shellfish monitoring plan. It is essential that Ecology understand more regarding the potential to release contaminants via re-suspension prior to merely concluding that no significant adverse impacts should occur because there will be a "net benefit." Because of the major impact on Tribal economies and the severe impact on treaty rights, it is essential that Ecology not rubber stamp the cleanup plan on this issue. More information is needed on this element and actual mitigation proposed and required. Only then might the assessed risks to the shellfish beds and to the tribal communities from the contaminants that will be released from dredging and other cleanup related activities be more accurately addressed.	
Comment #7.3 **Informing and involving affected tribes.** **Consent Decree**. The PNPTC adopts and incorporates the Port Gamble S'Klallam Tribe's comments submitted to Ecology on the Consent Decree. We share concerns regarding the treatment of the cleanup. We re-emphasize, below, a few key points made in the Port Gamble S'Klallam Tribes' comments that are related to the need to keep all of the affected tribes informed and involved. Tribal governments are to be kept informed and involved in the development and implementation of remedial actions, WAC 173-340-130(7)(a), and Ecology "shall ensure appropriate coordination and consultation with federally recognized Indian tribes" in implementing the SMS regulations, WAC 173-204-130(5). "The nature and degree of coordination and consultation shall be commensurate with the . . . tribes' interests and needs at the site." WAC 173-340-130(7)(b). Here, the [Port Gamble S'Klallam] Tribe's reservation lies on the shore of the Bay and the [Port Gamble	The public participation plan includes a process for Ecology to receive input from all interested parties including tribes. Ecology also follows a process at this site to coordinate and consult with tribes early and throughout the cleanup process. This includes regular updates and technical meetings. Ecology is committed to following the plan and procedure throughout the cleanup. Ecology does not generally agree to modify the CD boilerplate except as necessary in unusual circumstances that are not present at this site. Ecology will continue, as it has been, to actively engage the tribes as plans are developed and will review the PPP and update it as appropriate. Any changes to the PPP do not require modification of the CD. The complaint is the legal vehicle for initiating a lawsuit to require Defendants to perform the cleanup required under MTCA and its

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S'Klallam] Tribe [and four other treaty tribes] have treaty-reserved rights to harvest finfish and shellfish in the Bay. Tribal members obtain much of their food and livelihood from the Bay, and spend their lives in close contact with its waters and the sediment beneath it. Tribal interests and needs at the Site are thus incredibly high and so must be the nature and degree of Ecology's coordination and consultation with the Tribe[s]. The current Cleanup Documents fall far short of this standard. The Port Gamble S'Klallam Tribe has provided a draft Tribal Participation Plan section for inclusion in the Public Participation Plan and the PNPTC concurs that it needs to be included. Tribal governments must be kept informed and involved in the development and implementation of remedial actions through the use of a meaningful Tribal Participation Plan. Interests and needs of each of the five affected Tribes can be addressed in a new section of the Consent Decree that will vest interested tribes with rights similar to Ecology. At a minimum, information should be provided to the Chairman or Chairwoman of the Port Gamble S'Klallam Tribe, Jamestown S'Klallam Tribe, Lower Elwha Klallam Tribe, Skokomish Tribal Nation, and Suquamish Tribe. Finally, the PNPTC cannot fully examine the Consent Decree because it incorporates by reference the Complaint. Consent Decree at p. 2 ("the Parties wish to fully resolve issues concerning the Property that are raised by Ecology's Complaint.") The Complaint, however, has not yet been provided to the public. It is impossible to critique the settlement of a case, without knowing exactly what claims are settled via the Consent Decree. For this reason, the Complaint must also be provided.	implementing regulations. The CD is the legal settlement of the claims in the complaint. The complaint does not contain substantive technical or policy related details on which Ecology is requesting or required to request public comment.
Comment #7.4 **Concerns regarding the treatment of the cleanup** ***Draft Cleanup Action Plan.*** The PNPTC adopts and incorporates the Port Gamble S'Klallam Tribe's comments submitted to Ecology on the Draft Cleanup Action Plan. We share concerns regarding	See responses to Comments #1.1 (SMA-5) #1.2 (interim action) #1.3 (institutional controls), #1.6 (shellfish monitoring), #1.7 (dredging), and #1.11 (Site boundaries).

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the treatment of the cleanup. We re-emphasize, below, a few key points related to the DCAP: This is not a final cleanup action but an interim cleanup action according to the Model Toxics Control Act since the entire site is not addressed in this cleanup action plan. It is also not a final action because it leaves areas of high contamination unaddressed as well as it appears to have completely failed to evaluate the entire southern portion of the Bay. To characterize the clean up action as a "Port Gamble Bay" clean-up, without addressing key portions of the Bay is of great concern to the Tribes. The current DCAP does not address fully the issue of shellfish monitoring. Monitoring is required to protect the public and the Tribe. Port Gamble Bay is an important cultural and natural resource for subsistence shellfish harvest, therefore shellfish monitoring is not an option but essential. The Tribe supports that Ecology and Washington Department of Natural Resources use their authority to insert institutional control language in the Consent Decree in order to protect cleanup and restoration activities. The MDNS speaks of temporary closures to shellfish harvesting beds as a way of reducing the risks to the public from contamination exposure. MDNS at 7 (temporary closures during and after the clean up may be necessary due to sediment disturbance and other factors). There is no analysis of the potential risks to individuals, or the alternatives that would seek to avoid the risk altogether. It is unclear how the monitoring would occur so that the most at risk individuals (Tribal members) would be notified prior to exposure. In addition, the Point No Point Treaty Council would like to ensure and protect the treaty rights of the Tribes as well as help maintain that the Treaty rights of the Tribes may continued to be exercised in the future. In doing so, the PNPTC is especially concerned regarding the future uses of	Ecology understands that the amounts of shellfish and finfish harvested from Port Gamble Bay are a significant source of food and income for tribal people and has incorporated tribal consumption as a basis for developing the human health risk assessment.

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the site and the impact they may have on the Tribes' ability to exercise their federally recognized treaty rights. Above, the PNPTC touched on the concerns it has about the potential for shellfish closures and lack of true environmental analysis regarding the risk, and the lack of attempt to consider alternatives that may avoid or mitigate the risk of shellfish closures. Here, in reviewing the DCAP, the PNPTC would like to focus on one of the factors which must be considered in determining "whether a cleanup action provides a reasonable restoration time frame." WAC 173-204-570(5)(c). In doing so, the clean up action provides little assurances about a factor that is critical to the Tribes. That is, WAC 173-204-570(5)(c)(vi) which provides explicitly for the consideration of "[p]otential future use of the site or sediment cleanup unit, surrounding areas, and associated resources that are, or may be, affected by residual contamination." PNPTC asserts that the amounts of shellfish and finfish harvested from Port Gamble Bay are a significant source of food and income for Tribal people. For example, harvest by the Port Gamble S'Klallam Tribe in the Bay from 2010 through 2012 has averaged over 60,000 pounds of geoduck, over 15,000 dozen oysters, over 5,000 pounds of clams, and over 60,000 pounds of salmon. This harvest represents a slice of what the future use of the site entails. In addition, the treaty right is one that is considered a cultural right. That is, the ability to go fishing, and stay fishing, unencumbered by closures or toxic levels of contamination is a cultural need amongst the Tribes with treaty rights. These future uses are considered irreplaceable. As a result, the PNTPC is particularly concerned about any "work left undone." In considering the Port Gamble S'Klallam Tribe's comments, it must be emphasized that the decision is of great concern when it leaves certain	

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contaminated areas of the Bay that will not recover in a reasonable timeframe and leave contaminants that will leach out further into already cleaned up areas. In Ecology's response to comments to the Remedial Investigation and Feasibility Study Report, it was estimated that the center of the Bay would take 20 - 25 years to recover. Both cadmium and cPAHs were detected above cleanup levels at the periphery of SMA-5 boundaries. SMA-5 meets this qualification since there are areas above cleanup levels in that SMA that will not be addressed through an active cleanup remedy. This means that these areas within the site that are being left unaddressed and which will continue to pose a risk to the environment. See DCAP, figure 3-1.These areas within SMA-5 that have more contamination than others were lumped together for the purposes of this DCAP. For this reason, the PNPTC would like to emphasize its complete agreement with the Port Gamble S'Klallam Tribe's request that Ecology disaggregate SMA-6 from the less toxic SMA-5 and designate a new, active remedy for SMA-6 (such as Enhanced Monitored Natural Recovery ("EMNR")). Lumping together areas of contamination within the background in order to avoid taking action on those areas is not acceptable to the Tribes. In addition, the entire action area appears to stop at a line in the southern portion of the Bay. See Site Vicinity Map, DCAP, Figure 1-1. Below this line, it appears that the entire south area of the Bay is not part of the "site." However, the contaminants were found all the way up to the line drawn. See Map submitted by the Port Gamble S'Klallam Tribe. Thus, even this partial clean up area ignores that there is likely contamination beyond the boundary lines that were drawn to delineate the clean up area. Despite this, it has been characterized to the public as a clean-up of "Port Gamble Bay." It appears that there has been some decision to create boundaries of the site that may not relate at all to the presence of contamination. The Tribes would like to be assured there was an	

Comment	Ecology's Response
evaluation of the southern portion of the Bay, prior to merely eliminating it from the cleanup "site."	
Comment #7.5 **Additional work is needed on documents.** ***Conclusions.*** As explained, above, and in the submissions to Ecology by the Port Gamble S'Klallam Tribe, there are a number of issues that need to be addressed in a revised SEPA determination, Consent Decree, Cleanup Action Plan, and Public Participation Plan. We understand that considerable progress has been made by Ecology in the negotiation and development of the plan to cleanup Port Gamble Bay. We look forward to continued progress and a successful cleanup of the Bay.	Ecology finds the documents to be accurate and complete as written. The PPP may be updated but is not a formal part of the CD package. Much work remains during the engineering design phase and Ecology looks forward to continued involvement of tribes and agencies as this work proceeds.
Public Comments *(Comments 8 thru 25)*	
Comment #8 Bert Jackson Re. Government mandate and Port Gamble We have a community project that involves a picturesque bay, a 3,000 acre forest and a quaint historic village. The bay is polluted, the village is now being designed, and the forest is for sale. These are NOT three separate projects. The village, the forest and the bay very much relate to each other and their value depend on each other. It is critical that Gamble Bay be made healthy by the quickest and best cleanup methods available. The Consent Decree or Cleanup Action Plan is lacking, incomplete and contains inappropriate practices: (A) Partial use of the Feasibility Study and the omission of contaminated areas. (B) Not using best cleanup methods outlined in the Model Toxic Control Act. (C) No specified monitoring of the cleanup site	We agree that the Port Gamble Bay and Mill Site Property should be cleaned up quickly and with the best cleanup methods available. Ecology has considered your comments and we believe the Consent Decree and Cleanup Action Plan are complete and follow the procedures established in MTCA and SMS. The Feasibility Study was developed in accordance with the requirements of the Model Toxics Control Act and reflects our most up-to-date assessment of the effectiveness of various cleanup technologies including dredging, excavation, capping, and thin layer capping for enhanced monitored natural recovery (EMNR). In accordance with an Ecology-approved plan, monitoring of the site during and after the cleanup will be required. Future cleanup actions that may be required at the Mill Site are still being assessed by Ecology. The Potentially Liable Persons (PLPs) will be held legally responsible for the cleanup through the Consent Decree. While this cleanup is exempt from the procedural requirements of the Shoreline Management Act, it

Comment	Ecology's Response
during and after the cleanup by an independent testing agent or lab. (D) No plan for cleanup of the mill site and placing dredging that would ignore the Shoreline Management Act. It is not our concern for how much it cost or who pays for the cleanup. A polluted Gamble Bay is far more costly in human health care, economic loss, and property degradation. The State of Washington and Kitsap County are mandated to preserve and protect water quality. Olympic Property Group has responsibility for any pollution and toxins caused by the mill. It is our concern that all parties and players be held legally responsible to do the part they are tasked to do. THANK YOU - Bert Jackson A big fan of government to do the right thing.	is required to comply with the substantive provisions of the Act.
Comment #9 Bruce McCain, Member of the Community Relations Group, North Kitsap 99% I am pleased that the proposed Consent Decree will result in the cleanup of Port Gamble Bay. The procedures for the proposed dredging, capping, and monitoring of SMA-1 and SMA-2 appear to be well planned and appropriate. The plans for capping and monitoring SMA-3 and SMA-4 also seem adequate. My main question and concern deal with SMA-5. The Cleanup Action Plan proposes to take no "active remediation" in SMA-5. This plan seems reasonable for the majority of this SMA because most of it has sediment concentrations of contaminants at or slightly higher than background levels. However, there is an area just east of the FLTF that has sediments with some of the highest concentrations of cPAHs and dioxin/furans found	See response to Comment #1.1 for information about the cleanup decision for SMA-5

Comment	Ecology's Response
in the bay. This area is about the same size as SMA-4. Part of the justification for not dredging and capping SMA-5 is its large size, but this would not apply to this small area east of the FLTF. Another reason for not taking action is the depth of this site, but the USEPA and USCOE routinely dredge and cap areas of this depth. My question is: Why not clean up this highly contaminated site in SMA-5? My concern is that by leaving the above-mentioned site un-remediated, the proposed cleanup effort will not have cleaned up one of the most contaminated areas of the Bay. The Action Plan does propose long-term monitoring with potential cleanup in 10 years. During this period contaminants from this "hot spot" in SMA-5 could be redistributed to other parts of the BAY through physical and/or biological processes. For example, contaminants in benthic invertebrates in the "hot stop" could be consumed by predators and spread to other parts of the Bay. Thank you for your time and attention. I look forward to having a healthy ecosystem in Port Gamble Bay.	
Comment #10 Anonymous Commentor It was regrettable that DOE sidestepped the questions to clarify the relative toxicity of Port Gamble Bay in comparison to other local waterways. There was no way for the public to have an understanding of how low the level of contamination is, or how toxic it is. The DOE should have provided that information – it influenced the public testimony.	This Site is being cleaned up because of the risk to human health and the environment that contaminants at the site present, however the level of contamination varies across the site. The cleanup remedies selected in the CAP will reduce this risk. Following these actions, the risk to human health will be lower here than what is presented at natural background levels. Compared to the other Puget Sound sediment cleanup sites, Port Gamble Bay contains relatively low levels of hazardous substances such as cPAHs, cadmium, and dioxins/furans, and exhibits relatively low sediment toxicity. However, levels at the site do exceed acceptable Sediment Management Standards cleanup levels.

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Comment #11 Colleen E. Almojuela, member of the *Squamish Nation* and Adjunct Faculty, TESC and NWIC The information provided at the public meeting concerning the Port Gamble Bay Cleanup last night proved to be extremely interesting and very helpful to me. The Port Gamble Tribe has two higher education sites on the reservation, The Evergreen State College (TESC) and the Northwest Indian College (NWIC). I teach at both colleges. Because both colleges require students to bring local issues to the table, my students were the ones who enlightened me as to the importance of the Port Gamble Clean-Up and the impact on the community. Coming to the meeting, I was concerned as to what the impact was going to be on the members of the Port Gamble S'Klallam community, since their livelihood depends on the subsistence foods found in Port Gamble Bay on a daily basis. Although the information was helpful, I still left feeling concerns as to the impact there will be on the Tribal community's food sources, especially when I heard tribal elder talk about the high incidence of cancer in the community. In addition, I'd like to express how much I appreciate the current natural, environmental and recreational value of the property. As for the future, I feel the highest priority should be to consider the Port Gamble Tribe and the generations to come who will continue to live on the opposite shore until the end of time. I hope that care and concern will be made as to how the property will be used, once the clean-up has occurred, and that whatever is built keeps the environmental impact low. Thank you for hosting the public meeting and giving us the opportunity to give input.	Ecology appreciates the feedback and remains committed to conducting a cleanup project that improves the environmental health of Port Gamble Bay, and includes removing creosote piles, the primary source of cPAHs. Ecology recognizes that people who live or work adjacent to the bay, including the Port Gamble S'Klallam Tribe and subsistence fishers, are impacted by the Site and associated cleanup activities. The CAP and MDNS developed by Ecology takes these considerations into account and are responsive to these related concerns and impacts.
Comment #12 Dennis and Ingrid Hansen My wife and I have maintained a residence at the end of Port Gamble Bay for 25 years. We are avid	Pile removal methods will follow approved best management practices developed by the Washington Department of Natural Resources and the Army Corps of Engineers, including pulling

Comment	Ecology's Response
boaters. The last time the pilings were removed from the booming area we had many "dead heads" in the bay which are a serious threat to navigation and safety. We hope that this time all of the pilings will be accounted for and disposed of. Also, the bay is very shallow. We hope that if the sand capping is performed to cover toxic sediment that it will not create a shallower bay and therefore another hazard to navigation. Port gamble is also a refuge for boats heading north and we hope that the entrance channel to the bay will be maintained and marked with adequate depth for larger boats to enter the bay.	piles completely, or cutting broken piles off at or below the mudline so as to avoid "dead heads" as well as proper disposal. Ecology does not propose to construct sand caps at elevations that will impact the navigation of recreational boats. Maintenance and marking of the channel entrance to Port Gamble Bay is beyond the scope of the cleanup project.
Comment #13 Donna Simmons, Hood Canal Environmental Council The Hood Canal Environmental Council (HCEC) appreciates the opportunity to review and provide comments on the Draft Cleanup Action Plan (DCAP) for Port Gamble Bay. The HCEC is well aware of long standing threats to the environment and public health from toxic pollution associated with sawmill operations. Some toxic materials are still found in sediments on the bay floor and soils in and around the sawmill site. For this reason, the HCEC has been a strong advocate for the restoration of water quality and related natural resources in this part of the larger Hood Canal watershed. Preparation of the DCAP is a major step forward in the Port Gamble Bay recovery effort and represents many years of hard work on the part of public and private interest groups. It is, therefore, critically important that the final plan must be as strong and as comprehensive as possible and that the remedial actions called for will (1) reduce toxicity to sediment-dwelling organisms; (2) reduce human health risks; and (3) reduce dioxin/furan compounds and cadmium in shellfish. The HCEC applauds the intent of the DCAP and	Ecology shares your concerns and is working to assure that this cleanup sufficiently protects the environment and public health. See response to Comment #1.1 for information about SMA-5. Additional investigation of upland soils is planned. The data collected to date indicates that these soils do not appear to contribute to the contamination of sediments. While arsenic and PCBs may be present in the watershed, neither compound was found to be a site-related contaminant of concern (COC) for human health. Arsenic in the bay is from naturally-occurring geologic sources and arsenic concentrations are within natural background concentrations. PCBs exceed natural background concentrations at two intertidal locations which will be addressed by the cleanup of other COCs. Also see response to comment #1.20.

Comment	Ecology's Response
generally supports the planning effort. However, we believe that the DCAP, as presently written, falls short of its goals. It would be unfortunate to find out years from now that the actions taken were not sufficient to protect the environment and the public safety.	
The HCEC shares the concerns expressed by the Port Gamble S'Klallam Tribe and supports the Tribe's recommendations. In particular, we are concerned that the chosen remedial action for the SMA (Sediment Management Area) 5, is MNR (Monitored Natural Recovery) and not the more active EMNR (Enhanced Monitored Natural Recovery). According to the DCAP, the remedial actions of dredging, capping and EMNR are technically "impracticable" in SMA-5 (pg. 51, 5.3.5.2, DCAP). The DCAP states that there are levels of cPAH (carcinogenic Polynuclear Aromatic Hydrocarbon) and other contaminants in sediments and tissue in SMA-5 that exceed human health risk. Given that tribal members subsist on fish and shellfish as part of their culture, the selection of MNR, which involves a slower recovery process, could pose a higher risk to human health over a longer period of time. Further, the DCAP states that the best outcome under the more active remedy would be a reduction of only 30% of SMA-5 that could be sufficiently cleaned up. However, we agree with the Tribe that a 30% reduction of contaminants spread throughout the SMA represents a significant improvement and may well be worth the additional effort and expense. As for WDOE's concerns about environmental degradation resulting from EMNR, there are improved methods available to reduce or prevent potential negative impacts. In some instances, the DCAP raises more questions then it provides answers. For example, it is our understanding that the WDOE intends to address contamination issues in upland areas that are "off site", during a separate process. If contaminated soils and groundwater in these areas could be contributing to the toxicity of the marine	An estimated 2,000 creosote piles will be removed from the Site using best management practices developed and approved for use by the Washington Department of Natural Resources' creosote removal program. Other pilings will remain in the bay, but these are outside of the bounds of this cleanup action. Many of the remaining pilings are targeted for removal through other restoration activities in the bay. The scope and details of long-term monitoring will be finalized during engineering design. It is the responsibility of the Potentially Liable Persons (PLPs) to perform long-term monitoring, which Ecology will review and approve.

Comment	Ecology's Response
sediments, shouldn't these issues be included in this DCAP process? Why are arsenic and PCBs not included in the chemicals of concern when they are mentioned as hazardous materials present in the watershed? How many creosoted pilings will be removed, what are the alternative methods of removal to pulling and/or vibrating, what is the likelihood that some will be missed, and what actions will be taken to prevent contamination from remaining pilings in the future? And finally, will Sediment Recovery Zones be established where contaminated sediments are proposed to be left alone, and would long term monitoring of shellfish beds be included as part of a sediment zone activity? The cleanup of Port Gamble Bay is a huge undertaking with serious implications for the bay, surrounding uplands and ultimately, the greater Hood Canal watershed. The HCEC appreciates the opportunity to comment at this stage of the process. We look forward to working with other affected or interested parties in the recovery effort. We request that we remain on your mailing list to receive further information as the process continues.	
Comment #14 Joyce Troyer Wilson, Student, Evergreen State College, Reservation Based Community Determined Program I am writing in response to the proposed Consent Decree and Draft Cleanup Action Plan to clean up and restore Port Gamble Bay, a portion of Port Gamble Bay and Mill Site. My major concerns have to do with the historical impacts of the Mill on Point Julia and the East side of Port Gamble Bay that is not included in the cleanup by PR/OPG. With the narrow one-quarter mile opening of Port Gamble Bay it is similar to a bowl of soup in that, when contamination occurs on one side it includes	Thank you for sharing the results of your study. Plant tissue samples were not included in the sampling that informed decisions about the cleanup, but shellfish tissue samples were used to develop the human health criteria. Intertidal sediments were examined and metals levels, including copper, were at or below natural background. The cleanup boundaries for the site were developed through a rigorous evaluation of sediment data collected throughout Port Gamble Bay, including samples collected along the east side of the bay and in the vicinity of Point Julia. The results were compared to natural background levels and revealed that intertidal sediments away from the former mill were consistently lower for

Comment	Ecology's Response
the center of the bowl and spills over to the other side, and it pollutes the entire bay the shellfish, fish, and plants. The action plan would be more effective if it contained plans to clean all of Port Gamble Bay including the shoreline because there is no way to successfully clean half of the bay. During spring Quarter, as part of my final research paper through Evergreen State College's Reservation Based Community Determined Program about sustainability, I personally paid for the Analysis Lab in Tukwila, Washington to analyze Point Julia's *Salicornia virginica,* a plant also called beach asparagus taken from the intertidal zone directly across from the mill site. The beach asparagus contained large amounts of metals. If the beach asparagus is contaminated more than likely all of the intertidal plants are affected and not fit for human consumption or other uses such as cultural topical skin treatments. The results showed the following. "PAHs, specifically, phenanthrene and fluoranthene, had the highest concentrations of concern when beach asparagus was tested. cPAHs, such as chrysene and dibenzofuran, were also detected. This makes sense because PAHs are components of creosote, the main driver of the Port Gamble Bay cleanup. Copper also makes sense since plants tend to accumulate metals, and copper was historically used as a wood preservative. Beach asparagus is not known to be naturally high in copper, therefore the copper concentrations found are probably a result of the mill activities. (O'Rourke, R., 2013). I also do not agree that PR/OPG should be the sole party responsible for monitoring the clean up activities because it would be like BP Oil monitoring the cleanup of their oil spill in the Gulf of Mexico. As a good faith effort it would be better if it were a shared responsibility with the Port Gamble S'Klallam Tribe, State of Washington	all contaminants and were at or below background for metals and dioxins. cPAHs are being addressed by removal of creosote piles throughout the cleanup site. See response to comment #1.11 for more information about how boundaries are established. The scope and details of long-term monitoring will be finalized during engineering design. It is the responsibility of the Potentially Liable Persons (PLPs) to perform long-term monitoring, which Ecology will review and approve.

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Environmental Protection Agency, and the Department of Natural Resources. Thank you for the opportunity to share my opinion about this important environmental matter.	
Comment #15 LeRoy P. Kriley It was a pleasure meeting you at the public presentation on your "baby". I offer the following input for inclusion in the public record: During the public presentation on the subject cleanup plan last year, DOE indicated that it was charged with the cleanup of the entire Bay. The plan as presented at the October 29, 2013 public presentation does not address the creosoted pilings that remain in the Bay south of the cleanup area presented or the S'Klallam Pt. Julia Dock. When and how will these areas be addressed by DOE so that it can truly complete the task to which it was charged, especially since these do not appear to be the financial responsibility of Olympic Property Group? Also, what is the rationale for DOE's seemingly out of hand willingness to work with OPG on the replacement of the dock they are removing since it appears that this new dock would be an asset for the entire community? Thanks for the opportunity to provide my input.	The removal of piles not associated with historic mill operations is beyond the scope of this cleanup, though many of the remaining pilings are targeted for removal through separate and unrelated restoration activities in the bay. Similarly, any issues associated with permitting and construction of a dock at the mill site will be addressed under a separate permitting process that is not related to the cleanup project. Ecology's Toxics Cleanup Program has no decision-making role in future landuse and, therefore, has no authority regarding docks or other landuse activities.
Comment #16 Mark Barabasz As a neighbor of Port Gamble, I live a few miles up the canal in Driftwood Key, Hansville, I have grave concerns about the plans for Port Gamble Bay. I am not a scientist, however, I am a high tech trouble shooter and understand how projects should be developed. As Port Gamble Bay had, until 2007, the second largest herring population in Puget Sound, it is imperative that we	Ecology's Toxics Cleanup Program has no role or authority regarding future landuse decisions and does not participate in landuse permitting decisions. Upland site development will be addressed under a separate permitting process that is not related to this cleanup. Ecology recognizes the importance of forage fish, including herring, and is planning to perform a herring study in the bay. This will be coordinated

Comment	Ecology's Response
understand what caused their population decimation before any plans are made to do any development along the shores. I am referring specifically to the planned hotel, condos and shops on the old mill site. Jon Rose very flippantly stated the other night at an open house by Olympic Property Group that perhaps the best thing to do would be to return the mill to get the herring population back. Despite the arrogance behind such a remark masked in humor, it shows a complete disregard for the impacts of human activity on such a precious resource as our bay. The Hood Canal is being attacked at all levels, from the activities of the Navy further down the canal, the recent past building of a resort in Port Ludlow Bay to now this insane idea of placing a hotel on the waterfront, without first understanding the full impact of what has already happened there, never mind the compounding of issues when the construction begins. Mr. Rose stated that it would be at least a few years before construction begins but I would point out that the same things were done on the aforementioned port Ludlow Bay and they are still waiting to have their bay finally cleaned. It is my understanding that the Port Ludlow Village Council is waiting for state funds to remove creosote pilings and there is no fish population there to speak of. So, I would caution the DOE to check recent history and not make the same mistakes. There is a huge effort to clean up Puget Sound and the type of neocolonialist project planned by Olympic Property Group is anathema to the good work being attempted. I request that all permits be put on hold until those folks clean up the mess they made, then re-visit what can be put there. There are so many exciting things happening in the way of eco-tourism that it is hard to believe that we are still looking at an old, tired way of doing things. As I opened, I am a trouble shooter and I understand how a project should be done to limit the potentially egregious outcomes when the cart is put before the horse. Given the lack of	with the cleanup but conducted outside the scope of the cleanup project. See response to Comment #1.1 for information about decisions made for SMA-5.

Comment	Ecology's Response
understanding of what is going on in the bay, let's clean it first. To that point, I would also like to state that the SMA5 region should be broken down. It is too convenient to put one of the most polluted spots of the bay into such a large area and say it can't be cleaned. The cleanup can be limited to the most egregious areas. It takes political courage and love of the area for our leaders to do this, I understand, but with serious input from the DOE, this can be done.	
Comment #17 Craig Jacobrown I'm Craig Jacobrown. I live on Midway Avenue in Indianola But I come out and use -- I've worked here in Port Gamble, and I've used the uplands area quite a bit and very much appreciate the exciting new prospect we have to have a -- an open, somewhat natural -- "as natural as we can possibly make it" area to recreate and enjoy our Kitsap County Environment. But I just wanted to register that it is frustrating for me, as I asked earlier from Ms. Taylor, that it's hard to get answers to the questions about the biological enhancement project which will be taking place in, hopefully -- I guess it's due to start very soon. And I hope -- my sincere hope is that those efforts will be very closely coordinated with the cleanup efforts. It seems to me that it would be quite a waste of taxpayers' dollars if somehow there were parts of the reseeding of Olympic oysters and other eelgrasses and such, if those were to be contaminated in this process. And at this point, I don't have much satisfaction that that is fully coordinated because we can't talk about both tonight, unfortunately. But in addition, I'd also like to just register that, as someone asked, there will be -- this will primarily be paid for by OPG and Pope Resources, which is wonderful. And I am very thankful to them for their stepping up to do this, although I'm sure that they agree that it is their duty.	Habitat restoration and preservation projects will be carried out through a separate process that is not related to the cleanup project. However, these efforts are being closely coordinated with cleanup so that cleanup construction does not negatively impact restoration efforts. If new information becomes available that shows the need for other cleanup measures, appropriate changes would be made. The monitoring plan will include specific actions that will be taken if cleanup or recovery goals are not met.

Comment	Ecology's Response
But beyond that, there are several times that it might be monitored throughout the process, that new information, new data, new -- maybe new efforts need to be implemented in the cleanup process. And so if, indeed, their Consent Decree is signed today, will there also -- I'm hoping that there will be a lot of opportunity for that to change and even the cost of cleanup might change insofar as, as monitoring goes on and dredging goes on, we find that there are other unforeseen places that need some cleanup. And they might cost more -- it might end up costing more in the long run. So those are just two concerns I want to put out there. I hope that those can be addressed. If not tonight, sometime. Thank you.	
Comment #18 Connie Wellman And I would like to say, I come from a family that was raised on Pope and Talbot dollars. My family has lived -- we used to live here on this very land, and sometime we moved across the bay. And the shellfish issue is what concerns me the most. My family, we lived on the food that's provided from us at a time when we needed to go gather, prepare, and preserve our food. Now it's different. We have to call a hotline to find if our clams are good to eat. And some of the crabs, if we get crabs, they are black. And some of the geoducks that are harvested from out in this area, they have boils and they have -- they just don't even look good to eat. And I'm just concerned about -- I'm so glad you guys are cleaning this up because of my granddaughter, our future generations, that are going to be having to live on this land and live off the food here. And hopefully this will sustain the generations to come. And I just don't want to see any more being done to this land. I love this land.	Ecology understands the importance of the clams and seafood in the bay that you and your family rely on. We appreciate the feedback and are working to assure that the Site will be clean and healthy for current and future generations.

Comment	Ecology's Response
I've lived here all my life, and I don't plan on moving anywhere else. So I just wanted -- that thing I wanted to be put down on record was the importance of the clams and the seafood and everything, the fish, the shrimp, the herring, everything that we get out of our bay. And that's the one thing I want to help preserve. And I'd like to thank you guys for what you guys are doing, and that's about what I have to say.	
Comment #19 Lena Tunkara I am a member of the Port Gamble Bay Tribe as well as a member of the Port Gamble S'Klallam Tribal Council. I'm not here representing tribal council. I'm here to advocate for my home. I was born and raised on the reservation. First off, I want to thank everybody for putting together this plan. It's -- it's really great to see some type of action plan to help the bay -- to get all the contaminants out of it. Hopefully, this isn't the last. I believe the uplands needs some type of research as well. As far as the dredging, I'm concerned about the shellfish closures. I hope in the action plan there will be all procedures possible to be utilized to stop any type of shellfish closure. Our people depend on shellfish. The crab, the oysters, the cockles and -- even on -- daily. And we do want to make sure all shellfish closures are preventable. And another thing that I'm concerned about is on Page 5 in the handout that was sent out. There's a -- in the SMA No. 5, there's a depth of about 50 or 60 feet that I believe also needs some type of treatment, not just some natural. It needs some enhancement treatment as well. There's contaminants there that are cancer-causing that were found and I believe needs to be in the action plan as well. And just as far as the bay, I do not want history to repeat itself. I want this bay preserved for our future generations, and	Ecology is currently evaluating whether additional cleanup actions are necessary for the upland portion of the Site. This is a separate process from the cleanup described in this CD and CAP. Ecology continues to oversee and require that all necessary actions are performed to identify and cleanup contaminants on the upland portions of the site while the cleanup of the bay proceeds as a separate effort. See response to Comment #1.2. Dredging will be conducted using best management practices to minimize water quality impacts and appropriate water quality monitoring will be performed. Ecology will coordinate with tribes and agencies to minimize, as much as possible, shellfish closures due to cleanup construction. Coordination will also address minimizing impacts to tribal harvest activities. The engineering design will include a detailed evaluation of potential shellfish impacts from dredging, and appropriate operational controls and best management practices which will minimize potential impacts to shellfish from dredging. See response to Comment #1.1 for information about how decisions were made for SMA-5.

Comment	Ecology's Response
I don't want to see additional contamination because a dock wants to be built there with all the buildings on the mill site, development. I don't want to see that. I want to able to make sure that my future -- the future generations from us is going to be preserved. So that's all I have to say.	
Comment #20 John Willett I'm a past vice president of the North Kitsap Trails Association, and I'm the cofounder of the Kitsap Forest and Bay Coalition. I am here to talk about -- first about the bulkheading that I briefly talked about earlier on. Right now we have a new shoreline plain that we're working here on in the County. Pope is also -- wants to develop the mill site. We need to find out from you -- and you have been talking about mean tide line which involves the bulkheading, preservation, and restoration of beaches and shorelines. For -- the developer needs to know what this is going to mean for his shoreline and what kind of things he has to remove in order to meet that in a timely manner because all the stuff is happening in the County level pretty quickly. So in the next year or so, if we can get that moving along at the same time so that the developer knows what his setbacks and what area that will be, it will really help out. And we have businesses John Kuntz can talk about that relies on that beach, so we need to know, also, what you're planning to do with that, please. Another thing I would like to touch briefly on is we're talking about restoration and enhancement of the bay, and that includes the uplands which we were purchasing above the shoreline lands. And we also have a large chunk of uplands that is also in force that the community uses also. I have heard that Ecology doesn't like to purchase working forests. The community and the County is working on a plan for this property as a working	Ecology appreciates the feedback. Upland development, future restoration, and forest land policies are all outside the scope of the cleanup project. Cleanup activities will, by necessity, temporarily impact land uses in those areas adjacent to cleanup. Options for addressing potential impacts to businesses will be coordinated by the PLP.

Comment	Ecology's Response
forest. And one of the reasons we're talking about working forest is, in order to go from the tree farm into a diverse habitat area, that that place would have to be managed. And part of that management is cutting the trees, is a working forest. And in order to do that, you can make money out of cutting those trees and selling that product as you replant a diverse forest. I would like Ecology to really think about their policy on that and see how that might change to help us out here and working with us on the purchase of that property.	
Comment #21 Dave Teitzel We have a vested interest the proceedings. We love living in the bay. It's a beautiful resource. It's a unique area to have such a beautiful bay that's fairly undeveloped that's close in. So I would just like to say I appreciate the amount of effort and focus and diligence that the State and Ecology have provided to the process to make sure the bay can be maintained and actually improved so that we can enjoy it -- those of us who live on the bay can enjoy it for many years in the future. Those folks from the Tribe said we would like to have my kids -- my grandkids to be able to come back and enjoy the bay, enjoy the shellfish, enjoy the fishing, enjoy the recreation the bay has to offer for many years in the future. We also appreciate the work that OPG has been doing and the very major amount of investment in the cleanup process. So we support the effort and look forward completion.	Ecology appreciates the feedback and support for this cleanup effort.

Comment	Ecology's Response
Comment #22 **Bruce McCain** And I'd like to read something out of the SEPA checklist. It says, Evacuated and dredged materials will be stockpiled at the upland rehandling and beneficial reuse areas, located in the southern portion of the former sawmill as shown in Figure 2. I saw a picture earlier of the -- an aerial picture of the sawmill site, and all over the site was standing water. I don't know what time of the year that was taken. But that saw -- that mill site is in a floodplain, a hundred-year floodplain. I'm concerned that putting this contaminated material on this floodplain and we have a -- what's now, these days, is every year we have a hundred-year storm around here. I'm concerned that that material will be washed back into the bay, so I strongly urge that you use the best technology you can to contain that material upland so that it -- because we -- you're storing it in a very, very delicate area that could be easily washed away by heavy rain.	Any material stockpiling or processing on the upland area will occur within a contained facility. The details of material handling, stockpiling, and upland containment will be developed during engineering design to ensure that material will be handled in accordance with state surface water quality standards and will be engineered to withstand anticipated flood or rain events.
Comment #23 John Kuntz I own Olympic Outdoor Center, 32379 Rainier Avenue, Port Gamble, Washington. We've been in Port Gamble now for almost five years. And we came to Port Gamble because of the tourism, and I -- my business is almost 30 years old in Kitsap County, here. We've been in the tourist business, providing paddle-sports related activities from kayak rentals to salmon tours to classes, just a whole list of things. One of the reasons I moved to Port Gamble is I -- I truly believe that Port Gamble is one of the most spectacular places in all of Puget Sound, not just paddling but natural beauty. The fact that we have two miles of uninterrupted shoreline is an incredible advantage also.	Ecology appreciates the feedback and understands your concern. Cleanup activities will, by necessity, temporarily impact land uses in those areas adjacent to cleanup. Options for addressing potential impacts to businesses will be coordinated by the PLP.

Comment	Ecology's Response
So my main concern is, basically, how I'm going to survive this cleanup. So I'm very excited. I've been waiting five years for the cleanup. I can just tell you that, you know, as far as ecotourism goes, not just all my businesses, but for all businesses that are related, this is a really, really exciting thing to have happen. And I look forward to more businesses getting into the ecotourism business here in Port Gamble, not just Port Gamble businesses but also tribal businesses that are involved in ecotourism. There's a lot of businesses that benefit from our businesses. It's not just the person that comes, but the money that they spend in the restaurants and stores here in Port Gamble. It's also a very key part of keeping our business alive during that time. Also, it's also another regional draw for people to come here because this type of area is very rare now in Puget Sound, as you may know already. And so it's important to keep it that way. So I'm just here to say thank you very much. I look forward to working with you and my -- also my landlord, John Rose, to make this transition as easily -- as easy as possible.	
Comment #24 Sam Berry , Owner of Redside Construction I am the Owner of Redside Construction, a marine construction company one of the waterfront dependent businesses that make a living on the working waterfront at Port Gamble. I have a public comment & concern on this project which I and a significant number of the other water dependent businesses that have operated on the old mill site for many years share (to include Northwest Rock / Sealevel (marine contractor); Harbor Offshore (diving, marine construction), and Trinity Marine (marine demo, dredging, construction).	Ecology understands your concern and recognizes that cleanup actions will have impacts to existing uses as well as to harvest activities near the former mill area. During engineering design, the use of operational BMPs and the sequencing of actions will be examined to minimize impacts. Options for addressing potential impacts to businesses will be coordinated by the PLP. Removing existing pilings and piling-supported structures in order to cleanup creosote is required by the cleanup as a source control action. The replacement of these is outside of the scope of the cleanup and is permitted through a separate permitting review process. The construction contracting for the cleanup

Comment	Ecology's Response
As you may know, the state SMA (shoreline management act) supports water dependent businesses as a preferred use which we certainly are. Almost a decade ago, we moved our businesses to Port Gamble from Bainbridge so we could run our waterfront construction operations here and because Jon Rose / OPG represented that it would function for us as such. We did much of the cleanup of this land, including dredging the bay; controlled fueling on the site, and cleanup of the 30 acre mill site; etc…much of it at our own cost because we wanted our water dependent use to function here unobstructed for many years. Our relocation here was supported by the State, County, and landowner as a preferred & better use than the mill previously provided, and we invested big financial capital in permitting our uses for the future of our business. However, the cleanup project will terminate any possible use for the water dependent businesses here by removing all of the tie up areas, piers, and infrastructure we use to tie up marine equipment and to support our waterfront logistics. Once the cleanup project begins this site will completely lose it's viability for our businesses because there will be no place to safely tie up our multiple barges, boats & vessels, or logistically load out barges to perform our work, so as a result of the cleanup project Redside, Harbor Offshore, NW Rock, and possibly Trinity will have to move their businesses elsewhere or close their businesses altogether. Ironically however, all of the waterfront businesses will also face an imminent and somewhat ironic fact of life…a major marine cleanup project will occur on our doorstep which creates a wonderful job opportunity for all 4 marine construction dependent businesses. Redside, NW Rock / Sealevel, Harbor Offshore, and Trinity all own tugs, barges, cranes, and a variety of heavy marine equipment; and all have also performed on major cleanup projects including dredging and processing major quantities of creosote.	action is the responsibility of the PLP and is not subject to Ecology's contract bidding policies.

Comment	Ecology's Response
So, as a result of all of the above facts of life, the general consensus of all business owners here is that that it would be extremely unfair if the DOE cleanup project ran all of the waterfront businesses out of town solely to the benefit fish & big "out of town" contractors. We do not propose or prefer obstructing the cleanup project in any way, however we do propose that the DOE structure the Contract in such a way as to provide the local companies with some of the work to partially mitigate the impacts of the project & the eventual relocation it will cause local businesses. While we are not sure how this can mechanically be done, we have witnessed many public projects with Specifications mandating local hiring preference of up to 15% of the contract, or perhaps other Specifications that stipulate some select scopes of work are to be "Owner provided" (ex processing & disposal of the creosote, loading barges with sand or providing the sand for the cap, all land side operations provided as a whole, etc). Will DOE work with us and the other local water depended contractors to game plan opportunities and/or consider options? Please feel free to contact me as necessary. Ps…does the State have any "small business set aside" status like the Federal Government does to support small business?...that would probably work well also as most of the marine GC's these days are giant companies…	
Comment #25 Marilyn Bode Looking at the map of the polluted areas for DOE cleanup in Port Gamble Bay I notice immediately the contamination, pollution, debris and degradation is to the west where the colonizers	Ecology appreciates your comments and understands the importance of the bay for tribal cultural and harvesting purposes. We have worked actively with tribes, including the Port Gamble S'Klallam tribe, throughout this

Comment	Ecology's Response
settled and economically "developed" this originally pristine place. The east of the bay where the Port Gamble S'Klallam Tribe was removed to and still lives is free of all but one of these designated cleanup sites. Beginning in 1971 I had the task of educating non-Indians about treaty rights and tribal sovereignty. I am a non-Indian woman who has lived in Kingston since 1941. The Washington State Council of Churches and the Greater Seattle Church Council designated Indian Rights as the #1 racism issue of the 70's because of the hostile often violent church going commercial fishers during the Boldt decision. It grieves me that the attitudes of Kitsap County non-Indian residents are still hostile and ignorant of Sovereignty and Treaty Rights. (I see in the Nov. 8 North Kitsap Herald Opinion column that sovereignty training for school board members is planned so that members will be fluent in their understanding of Native American governments and culture and such understanding will contribute to a positive and productive working relationship with neighboring Native American governments. Has this ever been done with State and local governments and agencies?) It grieves me that DOE has not treated the Port Gamble S'Klallam Tribe as a primary contact and resource for DOE's addressing the bay's degradation. It grieves me that we white people continue to break our treaty agreements which are the law of the land. Point No Point Treaty Council, Northwest Indian Fish Commission, and the local tribe's members, and their fisheries, environment and economic development departments must be key in all DOE Port Gamble Bay and mill site planning. Olympic Property Group's involvement in the future of Port Gamble Bay and flood plain mill site is for stock holder benefit and economic gain. This is not sustainable. Port Gamble S'Klallam Tribal concern is for the health and well being of the bay and its environment and the survival of their tribe	cleanup investigation and planning process. We are committed to taking the necessary steps to assure that a permanent and protective cleanup of this Site is accomplished. The state provides government to government training curricula in order to train staff to work with tribes. Future land use development is outside the scope of the cleanup project.

Comment	Ecology's Response
and community. This is sustainable. Port Ludlow is also a disasterous example of how Pope and Talbot and its successor entities have operated for economic gain. The definition of ecology (which I know you know) is "dealing with the mutual relations between organisms and their environment." This includes people. The definition of environment is "the aggregate of all the external conditions and influences affecting the life and development of an organism." This includes people. The Tribes, with their treaty rights and sovereignty must be listened to and their position and expertise respected as DOE moves into finalizing cleanup plans.	
Agency	
Comment #26—Maurice Major, Cultural Resource Specialist, Washington Department of Natural Resources	
I've looked this over and have no comments from DNR regarding the Cultural Resources Assessment Plan. I look forward to continuing to receive cultural resource plans and reports as they become available.	Thank you for your review.

Explanatory Figures

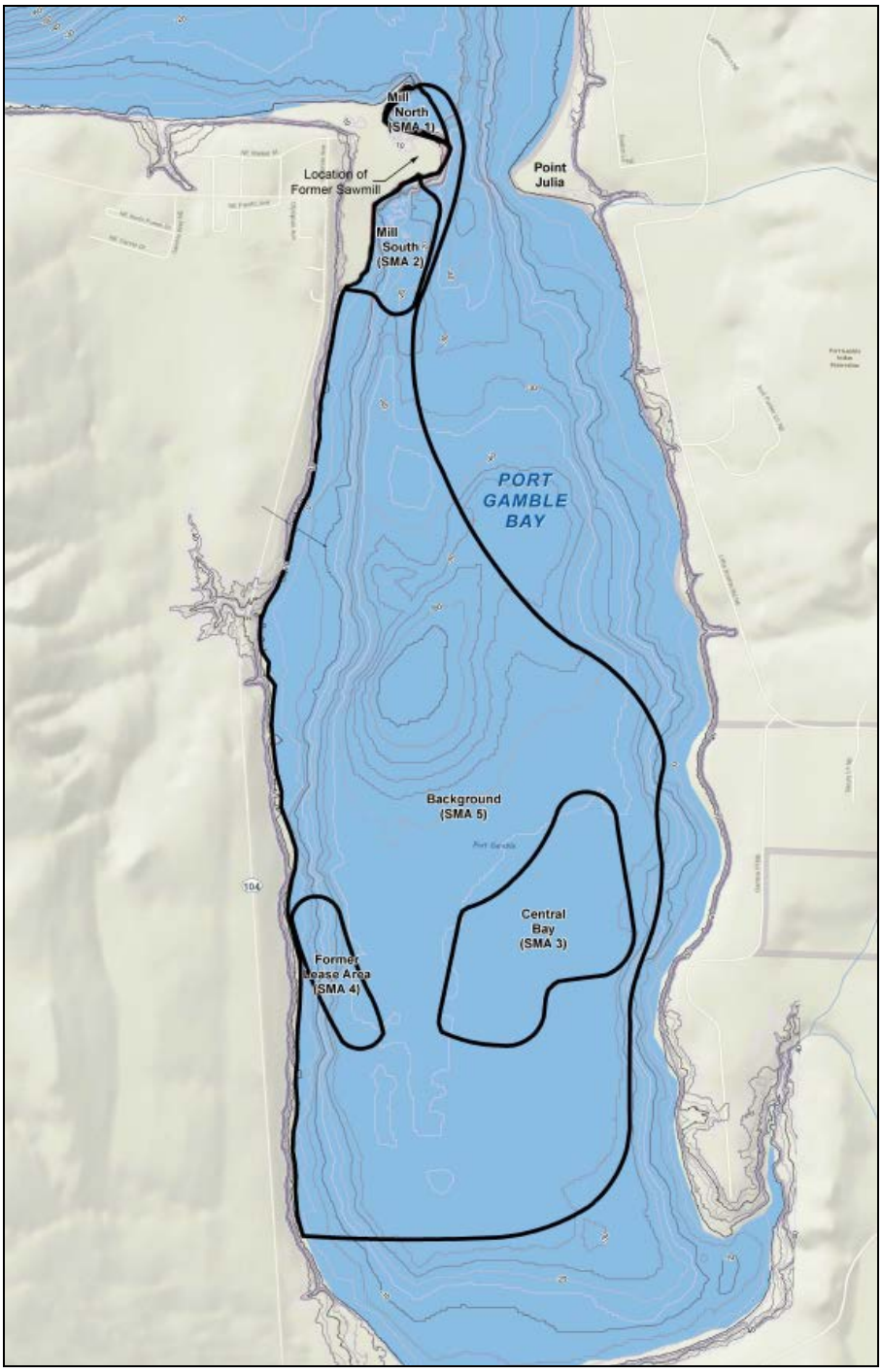

Figure 1. Port Gamble Bay (the Property) and the five SMAs located in Kitsap County, WA.

Ecology Contact Information

For more information on the Port Gamble Bay and Mill Site, contact:

Russ McMillan - Site Manager
Department of Ecology
Toxics Cleanup Program
PO Box 47600
Olympia, WA 98504-7600
Phone: (360) 407-7536
Email: Russ.McMillan@ecy.wa.gov

To review documents:

Poulsbo Library
700 NE Lincoln Road
Poulsbo, WA 98370
Phone: (360) 779-2915
http://www.krl.org/poulsbo

Little Boston Library
31980 Little Boston Road NE
Kingston, WA 98346
Phone: (360) 297-2670

Town of Port Gamble
House 11 - 32159 Rainier Ave NE
Port Gamble Weddings &
Events Office
Port Gamble, WA 98364
Hours: 7:30am – 4:00pm, Mon-Fri

Department of Ecology Headquarters
300 Desmond Drive SE
Lacey, WA 98503
By appointment only:
Contact Carol Dorn
Carol.Dorn@ecy.wa.gov or
(360) 407-7224

Ecology's Website

https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=3444

Appendix A

A1. List of Acronyms Used in this Document

BMPs – Best Management Practices

BTV – Background Threshold Value

CAP – Cleanup Action Plan

CD – Consent Decree

COC – Contaminant of Concern

cPAHs – carcinogenic Polynuclear Aromatic Hydrocarbon

CR – Cultural Resources

CRA – Cultural Resources Assessment

DAHP – Department of Archaeology and Historical Preservation

DCA – Disproportionate Cost Analysis

DCAP – Draft Cleanup Action Plan

DMMO – Dredged Material Management Office

DMMP – Dredged Material Management Program

DNR – Department of Natural Resources

(W)DFW – (Washington) Department of Fish and Wildlife

(W)DOE – (Washington) Department of Ecology

(W)DOH – (Washington) Department of Health

EDR – Engineering Design Report

EMNR – Enhanced Monitored Natural Recovery

EPA – Environmental Protection Agency

ESA – Endangered Species Act

FLTF – Former Log Transfer Facility

FS – Feasibility Study

HCEC – Hood Canal Environmental Council

JARPA – Joint Aquatic Resources Permit Application

MDNS – Mitigated Determination of Non-Significance

MNR – Monitored Natural Recovery

MTCA – Model Toxics Control Act

NRD – Natural Resource Damage

NRHP – National Register of Historic Places

NWIC – Northwest Indian College

OPG – Olympic Property Group

PAHs – Polynuclear Aromatic Hydrocarbon

PCBs – Polychlorinated biphenyls

PGHD – Port Gamble Historic District

PNPTC – Point No Point Treaty Council

PLP – Potentially Liable Persons/Parties

PPP – Public Participation Plan

PQL – Practical Quantification Limit

PR – Pope Resources

PSP – Paralytic Shellfish Poisoning

RI/FS – Remedial Investigation / Feasibility Study

SEPA – State Environmental Policy Act

SCL – Sediment Cleanup Level

SHPO – State Historic Preservation Office

SMA – Sediment Management Area

SMARM – Sediment Management Annual Review Meeting

SMS – Sediment Management Standards

TEQ – Toxic Equivalency Quotient

TESC – The Evergreen State College

U & A – Usual and Accustomed (Harvesting/Fishing Grounds)

USACE – United States Army Corps of Engineers

USEPA – United State Environmental Protection Agency

USFWS – United States Fish and Wildlife Service

WAC – Washington Administrative Code

PORT GAMBLE BAY MTCA CONSENT DECREE

(Port Gamble S'Klallam Tribe Draft, November 12, 2013)

XXVIII. TRIBAL PARTICIPATION PLAN

Pursuant to WAC 173-340-130(7), this Tribal Participation Plan is required to ensure that appropriate tribal governments are kept informed and involved in the development and implementation of remedial and natural resource restoration actions. This Section applies to the Port Gamble S'Klallam Tribe, the Jamestown S'Klallam Tribe, the Lower Elwha Klallam Tribe, the Skokomish Tribe, the Suquamish Tribe, and any other tribe that Ecology directs the Defendants, in writing, to include in this Tribal Participation Plan. Ecology shall maintain the responsibility for tribal participation at the Site. However, Defendants shall cooperate with Ecology to implement this Tribal Participation Plan, and shall:

A. Maintain a mailing list for distribution of information to tribes pursuant to this Section and the Tribal Participation Plan. Such list shall include, at a minimum, the following tribes and tribal contacts or their tribally-designated successors:

1. Chairman Jeromy Sullivan
   Port Gamble S'Klallam Tribe
   31912 Little Boston Road NE
   Kingston, Washington 98346

2. Chairman Ron Allen
   Jamestown S'Klallam Tribe
   1033 Old Blyn Highway
   Sequim, Washington 98382

3. Chairman Frances Charles
   Lower Elwha Klallam Tribe
   2851 Lower Elwha Road
   Port Angeles, Washington 98363

4. Chairman Charles "Guy" Miller
   Skokomish Tribal Nation
   80 North Tribal Center Road
   Skokomish Nation, Washington 98584

5. Chairman Leonard Forsman
   Suquamish Tribe
   PO Box 498
   Suquamish, Washington 98392-0498

B. Provide tribes with the same information and documents provided to the public and local governments pursuant to the Public Participation Plan and Section XXVII (Public Participation) of this Decree. Such information and documents shall be provided to tribes no later than the time they are provided to the public or to local governments.

C. Upon reasonable notice by a tribe, participate in presentations on the progress of the remedial action and natural resource restoration at the Site. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter.

D. Provide tribes with reasonable notice of any public or tribal presentations on the progress of the remedial action at the Site that are to be given pursuant to Sections XXVII (Public Participation) or XXVIII (Tribal Participation) of this Decree, and provide tribes with notice and a 30-day opportunity to comment on the engineering design reports and compliance monitoring plans.

E. Permit tribes to accompany Ecology in the exercise of the access rights provided to Ecology pursuant to Section IX (Access) of this Decree.

F. Provide tribes with the following information, at the same time it is provided to Ecology:

1. The same sampling, laboratory reports and test results provided to Ecology pursuant to Section X (Sampling, Data Submittal, and Availability) of this Decree;

2. The same Progress Reports provided to Ecology pursuant to Section XI (Progress Reports) of this Decree;

3. All reports provided to Ecology pursuant to Section XXVI (Periodic Review).

G. Provide tribes with reasonable notice of any amendment requests or proposed changes in project plans, in order to allow tribes to submit comments to Ecology with regards to those requests.

H. Provide tribes with timely copies of any amendments or minor changes documented in writing issued pursuant to Section XV (Amendment of Decree).

I. Provide tribes with written notification of the occurrence of any of the following events within 5 calendar days of its occurrence:

1. Disputes between a Defendant and Ecology that engage the dispute resolution provisions in Section XIV (Resolution of Disputes);

2. Requests by a Defendant for an extension of schedule submitted pursuant to Section XVI (Extension of Schedule)

3. Endangerment determinations as described in Section XVII (Endangerment);

4. Work stoppage orders related to the work under this Decree that are issued by Ecology for any reason;

5. Suits between Defendants and Ecology related to the work under this Decree;

6. Reopeners to the Decree sought by Ecology pursuant to Section XVIII (Covenant Not to Sue); and

7. Implementation of remedial or restoration action by Ecology pursuant to Section XXV (Implementation of Remedial Action), following Defendants' failure to implement such action.

J. Provide for annual tribal/Ecology cleanup progress meetings during implementation of the remedial actions.

K. Provide for a tribal/Ecology data and cleanup review meeting regarding monitoring, minor and substantial changes, and amendment held every 3 years from the date of the commencement of the remedial action until dismissal of the Consent Decree.