



## **RESPONSIVENESS SUMMARY**

### **East Bay Redevelopment Cleanup Site**

---

**September 2 – October 2, 2008 Public Comment Period**

**Agreed Order for Remedial Investigation and Interim Action**

**Prepared by  
Washington State Department of Ecology  
Southwest Regional Office  
Toxics Cleanup Program  
Lacey, Washington**

**January 2009**

## Contents

Site Information .....	4
Site Background.....	4
Site Location .....	5
Glossary of Terms.....	6
Comment #1: Jana Wiley .....	7
Comment #2: Steve Drinkard .....	7
Comment #3: Harry Branch.....	8
Comment #4: Michael J. Motte, Chief Executive Officer, Capital Medical Center .....	15
Comment #5: Drew Phillips, President, Berschauer Phillips Construction Company.....	15
Comment #6: Blake Murden.....	16
Comment #7: Don C. Brunell, President, Association of Washington Business.....	16
Comment # 8: Jim Leonard.....	17
Comment #9: Lowell Gordon, The Creative Office .....	17
Comment #10: Kim Adney, Account Source, Inc. ....	17
Comment #11: Michelle McCleary, Branch Manager, Manpower.....	18
Comment #12: Susan Bustetter, Independent Senior Supervisor, Sensaria Natural Bodycare.....	18
Comment # 13: Don Wesel.....	18
Comment # 14: Scott Bond, Chief Executive, Providence Health and Services-Southwest Washington, Providence St. Peter Hospital, Providence Centralia Hospital .....	19
Comment #15: Jessica McKeegan Jensen, Jensen Kokis Law PS .....	19
Comment #16: Jeanette Hawkins, Triway Enterprises .....	19
Comment #17: Dan Phillips, Batteries Plus,Owner .....	20
Comment #18: Pat Rants, President, The Rants Group .....	20
Comment #19: Trent Hart, Anderson Boone Architects.....	20
Comment #20: John A. Clees, Director Tax Services, RSM McGladrey, Inc.....	21
Comment #21: Pam Folsom, Folsom Public Relations .....	21
Comment # 22: Diana Stroble, board member of HOCM .....	22
Comment #23: Brian Forth, President, Sitecrafting.....	22
Comment #24: Sam Armour, Armour Vickerman PLLC.....	22
Comment #25: Caroline Bell .....	23
Comment #26: Rich Razgaitis, President, North America: Univera, Inc .....	23
Comment #27: John and Sally Warjone, HOCM Capital Campaign Tri Chairs .....	24
Comment #28: Greg Wingard.....	24
Comment #29: Stanley Stahl .....	25
Comment #30: Heather Trim, Urban Bays and Toxics Program Manager, People for Puget Sound .....	27
Comment #31: Lee Reimer.....	29

Comment #32: Arthur West.....	31
Comment #33: Greg Wingard.....	31
Comment #34: Ken Anderson, President / Broker, Coldwell Banker, Evergreen Olympic Realty, Inc.....	48
Comment #35: Rick Panowicz.....	49
Comment #36: Harry Branch.....	49

## Site Information

---

**Address:** 315 Jefferson Street NE

**Site Manager:** Steve Teel

**Public Involvement Coordinator:** Meg Bommarito

The Washington State Department of Ecology (Ecology) and the Port of Olympia (Port) have entered into an Agreed Order to begin cleanup of contamination at the East Bay Redevelopment site in Olympia. The Agreed Order is a legal document that will require the Port to:

- Develop a draft Remedial Investigation (RI) work plan outlining how the nature and extent of contamination will be determined.
- Conduct a Remedial Investigation and prepare an RI report.
- Prepare a work plan for and conduct an interim action (partial cleanup) to remove contaminated soil.

**The comment period for this agreed order ran from September 2 through October 2, 2008. Public comments and Ecology's responses are summarized in this document.**

## Site Background

---

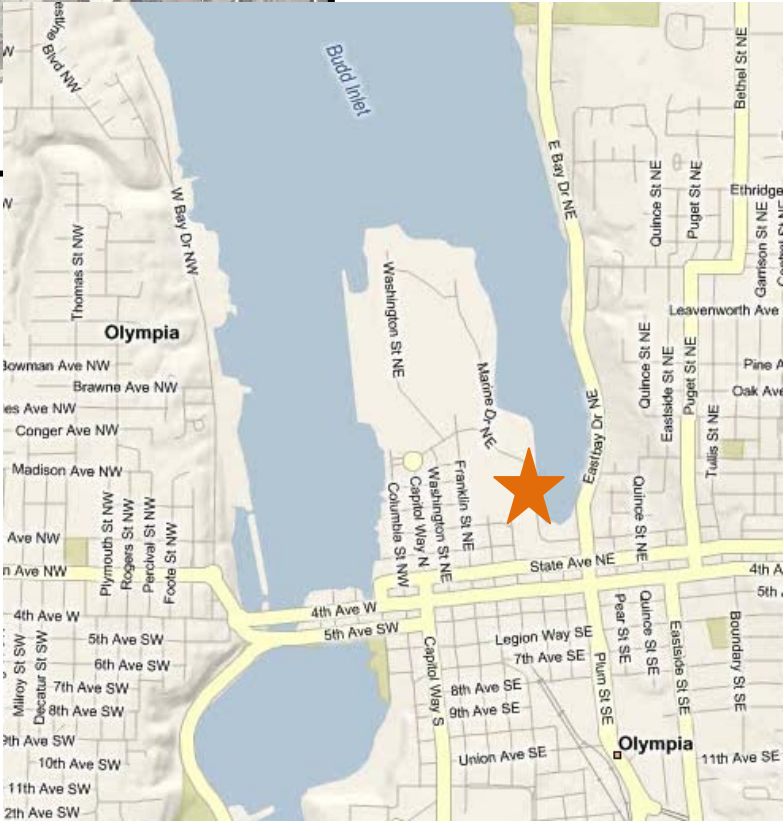
The site, generally located at 315 Jefferson Street NE, was used for timber-related industries from the late 1880s until 1968. Previous users included sawmill, planing mill, shingle mill and plywood manufacturers. From 1968 to the present, the site was used for commercial and light industrial activities and storage.

Historic activities at the site caused soil and ground-water contamination. Total petroleum hydrocarbons (TPHs), semi-volatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs), dioxins and furans and metals have been detected at levels above Model Toxics Control Act (MTCA) standards in soil. TPHs, SVOCs, PCBs and metals have been detected in groundwater above MTCA standards. The Port of Olympia entered the Voluntary Cleanup Program in January 2007. The site was transferred to a formal cleanup process in February 2008 to expedite the cleanup and to ensure Ecology oversight.

# Site Location



East Bay Redevelopment Proposed Short Plat Parcel Boundaries  
 East Bay Redevelopment Project Area



## Glossary of Terms

### Acronyms

AO	Agreed Order
CAP	Cleanup Action Plan
DFW	Washington State Department of Fish and Wildlife
MTCA	Model Toxics Control Act
NPDES	National Pollution Discharge Elimination System
RI/FS	Remedial Investigation/Feasibility Study

## Comment #1: Jana Wiley

Comments were received in an e-mail dated August 29, 2008.

I am inquiring about the plans for global warming on this property.

According to the Cascade Pole site manager, there are none for that MTCA site. Furthermore, it will not be addressed in the Interim Clean Up Plan due out in 2009. If the pumps fail due to sea level overtaking the slurry walls then contaminants will spread throughout that region again.

Already there is a portion of the slurry wall where the inside water levels exceed the outside levels.

Apparently there is the concern of rainwater seepage and/or an artesian well below. I do understand that it is believed that all contaminants are being contained within, though the integrity of the storm drain systems that serve that site has been questioned by others. These pipes do not seem to be of great concern however to the Ecology staff as they referred me back to the City of Olympia.

In speaking with other Ecology folks and Rich Hoey, from the City of Olympia Public Works department, there are some pretty deep concerns with sea level rise that are not translating out into public planning.

One example of this is the fact that LOTT will not be able to handle tidal flow pressure if the sea level rises as predicted. Yet, millions of dollars are being spent on this very location.

What is your view point on this. The City of Olympia has batted the idea around of a dike system. As Joe Hyer said, they cannot just up and move half of the town. Is this what Ecology envisions for Budd Inlet? How does this fit in the DFW and salmon/water quality improvements? Is it really feasible? Will there be a feasibility study proposed? Is it wise to begin discussions now?

## Ecology Response

Thank you for taking the time to comment! Questions about the cleanup at the Cascade Pole Site should be referred to the Ecology Site Manager, Mohsen Kourehdar at (360) 407-6256 or [mkou461@ecy.wa.gov](mailto:mkou461@ecy.wa.gov).

Regarding climate change and sea level rise in general, there is some information available on Ecology's web site (<http://www.ecy.wa.gov/climatechange/index.htm>, <http://www.ecy.wa.gov/climatechange/risingsealevel.htm>), and <http://www.ecy.wa.gov/pubs/0801008c.pdf>.

Regarding the East Bay Redevelopment Site in particular, potential sea level rise will be considered when planning cleanup work at the Site. We will continue to update you on the cleanup progress.

## Comment #2: Steve Drinkard

Comments were received in an e-mail dated September 5, 2008.

Letter to the Editor: and to the Wa. State Dept. of Ecology: This letter concerns the proposed agreement to "clean up" the Port of Olympia area to allow a children's museum to be built on that property in downtown Olympia. I am concerned about the Port of Olympia Clean-up (or lack thereof) of dioxin in that area. I am concerned that enough scientific study has been done to evaluate the depth of the dioxin contamination. Dioxin is in the dirt, is in the soil of that area. I am concerned that this dioxin will hurt little children. The Hands On Children's museum will be built right over the contaminated land. Dioxin will be there, in the dirt and in the air, effecting these children. There will be lawsuits. Who will be

responsible for allowing this children's museum to be built on contaminated Land? Will the Dept. of Ecology be responsible for this flawed cleanup? Will the City of Oly. be responsible for this flawed logic? Let me know, who will be responsible?

## **Ecology Response**

Thank you for taking the time to comment! Ecology is committed to ensuring that the Site is cleaned up to a level that will be protective of human health and the environment. At any time through the cleanup process, Ecology may determine that additional investigation and cleanup is necessary if there is evidence that the cleanup is not protective.

Under Washington's Model Toxics Control Act (MTCA), Ecology does not have the authority to direct the future land use through the cleanup process. Rather, Ecology considers the site's historical and current uses, projected future use, and local zoning designations in making a determination of the appropriate cleanup levels to be applied in a cleanup.

## **Comment #3: Harry Branch**

Comments were received in an email received September 9, 2008.

Dear Mr. Teel:

The Agreed Order for the East Bay Cleanup Site outlines a cleanup plan that is more likely to increase the spread and bioavailability of contamination than control it. The Order fails to adequately address the nature of contamination (is it moving) or its extent (how far has it moved).

The Agreed Order mentions the removal of contaminated soils, a good thing it would seem. Unfortunately it also mentions that the contaminated soil that is removed will be the soil to be removed in the process of burying utilities. The soils to be excavated will be a matter of which soils are in the pathway of development, not which soils are most mobile or contaminated.

In a patchwork layout like this clean soil that's brought in will almost surely become recontaminated and we'll simply end up with a larger volume of contaminated soil. Moreover, for all we know there will be an increase in the flow of contamination along a trench after it's filled. A brief literature search of "soil contamination preferred pathway" brings up hundreds of sources addressing a range of potential pitfalls. Material tends to migrate along pipes and other structures and through soil that has been disturbed.

The area is beset with as many as five historic artesian wells that were improperly decommissioned (bulldozed rather than packed to depth with bentonite clay). One of these wells broke the surface a few years ago just east of Alpine Experience. One broke the surface not long ago just east of the boat storage yard and currently flows for perhaps a hundred feet on the surface.

Hydraulically, the area could hardly be less stable. There are springs and wells all over downtown Olympia. One has broken through the sidewalk at Legion and Adams. In an artesian discharge zone like this water can break through at various depths forcing material in every direction under pressure. Furthermore, pressure from the changing tide permeates the water table twice a day throughout the Port Peninsula. A river of groundwater visibly flows from the bank at low tides.



The Agreed Order states that there will be an effort to develop "a draft Remedial Investigation (RI) work plan outlining how the nature and extent of contamination will be determined", that is to say a stab at a plan for how to develop a plan. Determining the "nature" should be a simple matter of what contaminants are present and by what mechanism they have migrated. Determining the "extent" should be a simple matter of sampling outward until we find acceptably clean soil. This is nothing new and it's not rocket science although it is science. Ecology seems to use terminology like "nature and extent" and "best science" for prolongations and protraction rather than solutions.

Contamination isn't the only issue. Oceanography is the study of physical, chemical and biological parameters that are interrelated. When you alter physical parameters by armoring and dredging you impact other factors including dissolved oxygen. This is especially true in estuaries, small ones like the one at Moxlie Creek's (site of the East Bay development) and large ones like the Mississippi River's. Dead zones, the result of eutrophication or low levels of dissolved oxygen, are spreading off many of the world's estuaries. East Bay is a perfect example.

One exception to this otherwise global trend is the estuary of the Hudson River. When you exit the Lincoln Tunnel heading into New Jersey you see miles of intact salt marsh teeming with egrets and diving ducks. Species from buffleheads to herring are either stable or on the rebound right in the shadow of Manhattan Island.

What's New York doing so differently? New York State has a Department of Environmental Conservation. They passed the Hudson River Estuary Management Act resulting in the Hudson River Estuary Program. The mission of the Hudson River Estuary Management Program is to "protect, preserve and where possible restore" the estuary. Decisions are based on "sound science and ecosystem based management". Sanctuaries, "areas of special ecologically significant habitat" and basic physical, chemical and biological parameters are specifically mandated as is the "cleanup and restoration of contaminated sites" with specific mention of soils and groundwater.

Compare this to the Washington Department of Ecology. Ecology is the study of ecosystems. The word does not imply environmental conservation. Ecology's mission is to "protect, preserve and enhance" Washington's environment and "promote the wise management of our air, land and water...(to) move Washington forward in a global economy...prevent pollution, clean up pollution and support communities (economically?) and natural resources (of economic value?)."

On September 3rd Ecology released a press release pertaining to the addition of more toxic sites to their list: "Cleanups make it possible for economic development to pick up in areas that might have been abandoned otherwise," said Jim Pendowski, who manages Ecology's Toxics Cleanup Program. "We continue working to protect human and environmental health, which in turn can contribute to economic health." Rather than recognizing the intrinsic importance of natural systems, the Washington Department of Ecology must justify every action in terms of its immediate economic benefit.

Wherein their mission statements are concerned, New York's mandate to "protect, preserve and where possible restore" and the "cleanup and restoration of contaminated sites" has no equivalent in Washington. Conversely, the mandate to "move Washington forward in the global economy" has no equivalent in New York. New York and California restore salt marsh "wherever possible". Developing historic tide flats in a badly degraded water body like East Bay, wouldn't even be a consideration.

Portland, Maine has problems with contaminated sediments that date back hundreds of years. I attended a conference in Portland where the necessity of source control was a key component. When something like lead is found in benthic sediments the extent of the contamination is determined in all directions and in particular back to its source which is usually the result historic industrial activities ashore.

Portland learned from some expensive mistakes that you can't reverse the order: assess, cleanup, develop/restore. The Washington Department of Ecology believes that the order can be reversed, that we can develop prior to determining the nature and extent of contamination or its source or what it is the source of.

At East Bay it appears as though dioxin has migrated from Cascade Pole all the way to benthic sediments at Moxlie Creek to the south and the shipping berths to the west indicating that it is mobile. We should be wondering: Is dioxin dissolved in petrochemicals? Is it still moving? Is it being pushed around by tidal or artesian forces? Is it flushing into Puget Sound? Is it present in the artesian spring east of the boat storage yard where children have been observed playing?

East Bay was historically intertidal salt marsh and it could be restored at this time without any loss of use. Hauling away soil from trenches and capping the area with a mix of features is not a "cleanup". In both respects what is being planned at the Port of Olympia wouldn't even get to first base in other states.

A large sign with beautiful graphics now sits at the site: "Energizing...East Bay...and beyond, coming soon to East Bay" and etc. The fact that the Port of Olympia continues to invest large sums of money designing and promoting East Bay and the fact that Ecology is allowing construction to proceed while this comment period is in place, indicate that the important decisions regarding the site have already been made. This public comment period is a farce.

The idea of locating a place for children to play on a site that's so highly contaminated with dioxin is on its own merits a crazy idea. Why would a crazy idea like this get a green light from the very beginning, before the problem is understood?

The Washington State Department of Ecology seems like an agency adrift. Attempts to find and control sources of contamination in Budd Inlet have stalled. There is no correlation, for example, between what we are learning about benthic contamination along Western Budd Inlet and what is happening ashore at West Bay.

It would be easy for a person to become cynical. The Agency that we think is assigned with protecting and restoring Puget Sound seems to serve instead the interests of economic growth and development. Port Commissioners and representatives of the Hands On Children's Museum always turn to the statement: "We prefer to just leave it to the experts." Nobody is minding the ship.

This problem needs a big political fix. Unfortunately the general public is too busy and disconnected from the natural world to notice what's happening. There's no political will to change. But this isn't the way it has to be and it isn't the way it is elsewhere. The Puget Sound Water Quality Authority was abolished under pressure from businesses that were threatening to leave the state. They got their way and left anyway. Now we need a Bill to create a Puget Sound Conservation and Cleanup Act and resurrect the Puget Sound Water Quality Authority. Then things like this Agreed Order will be a thing of the past.

Harry Branch

## **Ecology Response**

Individual comments and responses are broken down below.

### **Comment 3.1**

The Agreed Order for the East Bay Cleanup Site outlines a cleanup plan that is more likely to increase the spread and bioavailability of contamination than control it. The Order fails to adequately address the nature of contamination (is it moving) or its extent (how far has it moved).

### **Ecology Response**

Thank you for taking the time to comment! A final site cleanup plan is not part of the scope of the Agreed Order. The Agreed Order requires the Port of Olympia to conduct a Remedial Investigation (RI) and Interim Action (partial cleanup). The RI will define the nature and extent of contamination at the Site. The information obtained from the RI will be used in planning the cleanup of the site, which will be the subject of a subsequent Agreed Order.

### **Comment 3.2**

The Agreed Order mentions the removal of contaminated soils, a good thing it would seem. Unfortunately it also mentions that the contaminated soil that is removed will be the soil to be removed in the process of burying utilities. The soils to be excavated will be a matter of which soils are in the pathway of development, not which soils are most mobile or contaminated.

### **Ecology Response**

The first cleanup work that will be done (the Interim Action associated with the utility trenching) is only intended to clean up a portion of the contamination at the Site. Additional investigation work is needed to define the extent of soil and groundwater contamination before the final cleanup plan for the site can be prepared. This cleanup plan will be designed to protect human health and the environment.

### **Comment 3.3**

In a patchwork layout like this clean soil that's brought in will almost surely become recontaminated and we'll simply end up with a larger volume of contaminated soil. Moreover, for all we know there will be an increase in the flow of contamination along a trench after it's filled. A brief literature search of "soil contamination preferred pathway" brings up hundreds of sources addressing a range of potential pitfalls. Material tends to migrate along pipes and other structures and through soil that has been disturbed.

### **Ecology Response**

Ecology is committed to ensuring that the Site is cleaned up to a level that will be protective of human health and the environment. At any time through the cleanup process, Ecology may determine that additional investigation and cleanup is necessary if there is evidence that the cleanup is not protective.

### **Comment 3.4**

The area is beset with as many as five historic artesian wells that were improperly decommissioned

(bulldozed rather than packed to depth with bentonite clay). One of these wells broke the surface a few years ago just east of Alpine Experience. One broke the surface not long ago just east of the boat storage yard and currently flows for perhaps a hundred feet on the surface.

Hydraulically, the area could hardly be less stable. There are springs and wells all over downtown Olympia. One has broken through the sidewalk at Legion and Adams. In an artesian discharge zone like this water can break through at various depths forcing material in every direction under pressure. Furthermore, pressure from the changing tide permeates the water table twice a day throughout the Port Peninsula. A river of groundwater visibly flows from the bank at low tides.

## **Ecology Response**

Ecology has informed the Port that decommissioning of all artesian wells is required. This task will be incorporated into the Remedial Investigation Work Plan.

## **Comment 3.5**

The Agreed Order states that there will be an effort to develop "a draft Remedial Investigation (RI) work plan outlining how the nature and extent of contamination will be determined", that is to say a stab at a plan for how to develop a plan. Determining the "nature" should be a simple matter of what contaminants are present and by what mechanism they have migrated. Determining the "extent" should be a simple matter of sampling outward until we find acceptably clean soil. This is nothing new and it's not rocket science although it is science. Ecology seems to use terminology like "nature and extent" and "best science" for prolongations and protraction rather than solutions.

Contamination isn't the only issue. Oceanography is the study of physical, chemical and biological parameters that are interrelated. When you alter physical parameters by armoring and dredging you impact other factors including dissolved oxygen. This is especially true in estuaries, small ones like the one at Moxlie Creek's (site of the East Bay development) and large ones like the Mississippi River's. Dead zones, the result of eutrophication or low levels of dissolved oxygen, are spreading off many of the world's estuaries. East Bay is a perfect example.

One exception to this otherwise global trend is the estuary of the Hudson River. When you exit the Lincoln Tunnel heading into New Jersey you see miles of intact salt marsh teeming with egrets and diving ducks. Species from buffleheads to herring are either stable or on the rebound right in the shadow of Manhattan Island.

What's New York doing so differently? New York State has a Department of Environmental Conservation. They passed the Hudson River Estuary Management Act resulting in the Hudson River Estuary Program. The mission of the Hudson River Estuary Management Program is to "protect, preserve and where possible restore" the estuary. Decisions are based on "sound science and ecosystem based management". Sanctuaries, "areas of special ecologically significant habitat" and basic physical, chemical and biological parameters are specifically mandated as is the "cleanup and restoration of contaminated sites" with specific mention of soils and groundwater.

Compare this to the Washington Department of Ecology. Ecology is the study of ecosystems. The word does not imply environmental conservation. Ecology's mission is to "protect, preserve and enhance" Washington's environment and "promote the wise management of our air, land and water...(to) move Washington forward in a global economy...prevent pollution, clean up pollution and support communities (economically?) and natural resources (of economic value?)."

On September 3rd Ecology released a press release pertaining to the addition of more toxic sites to their list: "Cleanups make it possible for economic development to pick up in areas that might have been abandoned otherwise," said Jim Pendowski, who manages Ecology's Toxics Cleanup Program. "We continue working to protect human and environmental health, which in turn can contribute to economic health." Rather than recognizing the intrinsic importance of natural systems, the Washington Department of Ecology must justify every action in terms of its immediate economic benefit.

Wherein their mission statements are concerned, New York's mandate to "protect, preserve and where possible restore" and the "cleanup and restoration of contaminated sites" has no equivalent in Washington. Conversely, the mandate to "move Washington forward in the global economy" has no equivalent in New York. New York and California restore salt marsh "wherever possible". Developing historic tide flats in a badly degraded water body like East Bay, wouldn't even be a consideration.

Portland, Maine has problems with contaminated sediments that date back hundreds of years. I attended a conference in Portland where the necessity of source control was a key component. When something like lead is found in benthic sediments the extent of the contamination is determined in all directions and in particular back to its source which is usually the result historic industrial activities ashore.

Portland learned from some expensive mistakes that you can't reverse the order: assess, cleanup, develop/restore. The Washington Department of Ecology believes that the order can be reversed, that we can develop prior to determining the nature and extent of contamination or its source or what it is the source of.

At East Bay it appears as though dioxin has migrated from Cascade Pole all the way to benthic sediments at Moxlie Creek to the south and the shipping berths to the west indicating that it is mobile. We should be wondering: Is dioxin dissolved in petrochemicals? Is it still moving? Is it being pushed around by tidal or artesian forces? Is it flushing into Puget Sound? Is it present in the artesian spring east of the boat storage yard where children have been observed playing?

East Bay was historically intertidal salt marsh and it could be restored at this time without any loss of use. Hauling away soil from trenches and capping the area with a mix of features is not a "cleanup". In both respects what is being planned at the Port of Olympia wouldn't even get to first base in other states.

## **Ecology Response**

Comments noted.

### **Comment 3.6**

A large sign with beautiful graphics now sits at the site: "Energizing...East Bay...and beyond, coming soon to East Bay" and etc. The fact that the Port of Olympia continues to invest large sums of money designing and promoting East Bay and the fact that Ecology is allowing construction to proceed while this comment period is in place, indicate that the important decisions regarding the site have already been made. This public comment period is a farce.

## **Ecology Response**

Comments noted. Some sampling and testing activities occurred during the comment period. This sampling and testing work was conducted by the Port of Olympia during their preparation of a National Pollution Discharge Elimination System (NPDES) Permit application for construction dewatering. The

NPDES Permit is a separate permit that is required by Federal law. However, no construction activities occurred or were approved to occur by Ecology during this period. As indicated in the Agreed Order, both the draft Interim Action Work Plan and the draft RI Report will be made available for public comment during a designated public comment period.

### **Comment 3.7**

The idea of locating a place for children to play on a site that's so highly contaminated with dioxin is on its own merits a crazy idea. Why would a crazy idea like this get a green light from the very beginning, before the problem is understood?

### **Ecology Response**

Under Washington's Model Toxics Control Act (MTCA), Ecology does not have the authority to direct the future land use through the cleanup process. Rather, Ecology considers the site's historical and current uses, projected future use, and local zoning designations in making a determination of the appropriate cleanup levels to be applied in a cleanup.

Ecology is committed to ensuring that the Site is cleaned up to a level that will be protective of human health and the environment. At any time through the cleanup process, Ecology may determine that additional investigation and cleanup is necessary if there is evidence that the cleanup is not protective.

### **Comment 3.8**

The Washington State Department of Ecology seems like an agency adrift. Attempts to find and control sources of contamination in Budd Inlet have stalled. There is no correlation, for example, between what we are learning about benthic contamination along Western Budd Inlet and what is happening ashore at West Bay.

It would be easy for a person to become cynical. The Agency that we think is assigned with protecting and restoring Puget Sound seems to serve instead the interests of economic growth and development. Port Commissioners and representatives of the Hands On Children's Museum always turn to the statement: "We prefer to just leave it to the experts." Nobody is minding the ship.

This problem needs a big political fix. Unfortunately the general public is too busy and disconnected from the natural world to notice what's happening. There's no political will to change. But this isn't the way it has to be and it isn't the way it is elsewhere. The Puget Sound Water Quality Authority was abolished under pressure from businesses that were threatening to leave the state. They got their way and left anyway. Now we need a Bill to create a Puget Sound Conservation and Cleanup Act and resurrect the Puget Sound Water Quality Authority. Then things like this Agreed Order will be a thing of the past.

### **Ecology Response**

Comments noted.

## **Comment #4: Michael J. Motte, Chief Executive Officer, Capital Medical Center**

Comments were received in an e-mail dated September 15, 2008.

I am in support of the clean-up efforts at the East Bay site in Downtown Olympia. Below is a description from the City of Olympia's website:

<http://www.ci.olympia.wa.us/newsfaqs/hocm.htm>

### Overview

Anchor projects for the multi-million dollar renewal of Olympia's East Bay waterfront are the Hands on Children's Museum and the LOTT Alliance.

Envisioned for the 14-acre prime parcel are waterfront walking trails that connect the East Bay area to Olympia's mile-long Percival Landing Boardwalk, a public plaza for playing and gathering, a permanent home for Olympia's award-winning Hands on Children's Museum, the LOTT Alliance's new administrative headquarters and innovative Water Education Center, restaurants, shops, offices, and a destination hotel.

Planning partners in Energizing East Bay are the City of Olympia, [Hands on Children's Museum](#), [LOTT Alliance](#), and the [Port of Olympia](#).

This project will only enhance Olympia's rankings as defined below:

- The most secure mid-sized U.S. city as ranked by [Best Places](#) on behalf of Farmers' Insurance.
- #8 on Forbes Magazine 2008 list of Best Places for Business and Careers, and #10 on the 2007 list.
- #16 on Sperling's 2007 ranking of Best United States Cities.
- #36 on the 2007 Country Home Magazine list of Best Green Cities in America.
- Featured in the 2006 edition of 50 Fabulous Places to Raise Your Family.

The Port and the East Bay partners are doing a great job of working together to clean-up the East Bay area. I do believe this legacy project will enhance Olympia's chances to be a destination stop for future visitors. I ask you too keep the project moving forward fast so that we can meet the critical PFD funding deadlines, restore the waterfront for public use, and create new economic vitality in the downtown.

## **Ecology Response**

Thank you for taking the time to comment! We appreciate your support for the cleanup of the site! We will continue to update you on the cleanup progress.

## **Comment #5: Drew Phillips, President, Berschauer Phillips Construction Company**

Comments were received in an e-mail dated September 15, 2008.

I am a citizen of Olympia and, like everyone else in this town, concerned for the safety of my community and my family. I am also in full support of the East Bay Redevelopment for the proposed uses, including a Children's Museum. I completely trust the decision makers within the Port, City and the State and hope that timely decisions can be made to ensure this projects success.

I understand that determining the answers to the contamination questions is tough but please use the collective knowledge of the stakeholders along with your experience and choose the smartest path.

I truly believe in the vision of this project and know that it can soon be a legacy for entire region. Right now is the time to reclaim this land, momentum and funding are finally a reality. There are thousands of us anxiously waiting to see this project move on.

Thanks you for your hard work,

## **Ecology Response**

Thank you for taking the time to comment! We appreciate your support for the cleanup of the site! We will continue to update you on the cleanup progress.

## **Comment #6: Blake Murden**

Comments were received in an e-mail dated September 15, 2008.

I am writing in support of the clean-up efforts at the East Bay site in downtown Olympia where the new Hands On Children's Museum will be built. I believe the Port and the East Bay partners are doing a great job of working together to clean-up the East Bay area and make this legacy project possible for the benefit of the region. I encourage you to keep the project moving forward so that we can meet our critical PFD funding deadlines, restore the waterfront for public use, and create new economic vitality in the downtown.

## **Ecology Response**

Thank you for taking the time to comment! We appreciate your support for the cleanup of the site! We will continue to update you on the cleanup progress.

## **Comment #7: Don C. Brunell, President, Association of Washington Business**

Comments were received in an e-mail dated September 15, 2008.

As a member of the Thurston County Business Roundtable, I'd ask you to expedite the East Bay Cleanup. It is vitally important to the economic growth of our area and for the health of the Puget Sound. Thank you.

## **Ecology Response**

Thank you for taking the time to comment! We appreciate your support for the cleanup of the site! We will continue to update you on the cleanup progress.



## **Comment # 8: Jim Leonard**

Comments were received in an e-mail dated September 16, 2008.

Friends at DOE,

I'm interested in weighing in on the East Bay clean-up project. I would like to ask the DOE to step up to this challenge at long last and provide all of us here in Thurston County with a decision that provides a timely and reasonable outcome to this historic pollution problem that has kept that waterfront from having any kind of future except as a blighted abandoned area.

We can't stay where we are. The land and water both need clean-up and Olympia will dramatically benefit from this eastern end of Downtown finally receiving some investment to make it viable. DOE should be delighted that the best and brightest minds available to ponder the most appropriate clean-up have offered a solution. Delay is simply no longer an option. Let's get on with it!!

### **Ecology Response**

Thank you for taking the time to comment! We appreciate your support for the timely cleanup of the site! We will continue to update you on the cleanup progress.

## **Comment #9: Lowell Gordon, The Creative Office**

Comments were received in an e-mail dated September 16, 2008.

I strongly support the East Bay environmental cleanup and encourage development of the East Bay area.

### **Ecology Response**

Thank you for taking the time to comment! We appreciate your support for the cleanup of the site! We will continue to update you on the cleanup progress.

## **Comment #10: Kim Adney, Account Source, Inc.**

Comments were received in an e-mail dated September 16, 2008.

The Washington State Department of Ecology (DOE) and the Port of Olympia are entering into an Agreed Order to begin cleanup of contamination at the East Bay Redevelopment site in Olympia. Historic activities at the site caused soil and groundwater contamination. Clean up of the site is necessary in this redevelopment.

Main Points:

- Economic redevelopment of a blighted area, a new gateway for the area
- DOE should be pleased the area will be cleaned up
- The area is prime water front real estate that will attract high quality, private investment
- DOE needs to provide a reasonable and timely outcome

## **Ecology Response**

Thank you for taking the time to comment! We appreciate your support for the establishment of an Agreed Order for the site! We will continue to update you on the cleanup progress.

## **Comment #11: Michelle McCleary, Branch Manager, Manpower**

Comments were received in an e-mail dated September 16, 2008.

I wanted to voice Manpower's support for the joint effort clean up. We feel it is important to keep our community clean for prosperity and for community value.

## **Ecology Response**

Thank you for taking the time to comment! We appreciate your support for the cleanup of the site! We will continue to update you on the cleanup progress.

## **Comment #12: Susan Bustetter, Independent Senior Supervisor, Sensaria Natural Bodycare**

Comments were received in an e-mail dated September 16, 2008.

As an Olympia resident and business owner, I am very supportive of the East Bay clean up efforts!

## **Ecology Response**

Thank you for taking the time to comment! We appreciate your support for the cleanup of the site! We will continue to update you on the cleanup progress.

## **Comment # 13: Don Wesel**

Comments were received in an e-mail dated September 16, 2008.

I support this. Many worthwhile projects deserve our funds and energy, but we can't do them all. This is one we should do.

## **Ecology Response**

Thank you for taking the time to comment! We appreciate your support for the cleanup of the site! We will continue to update you on the cleanup progress.

## **Comment # 14: Scott Bond, Chief Executive, Providence Health and Services-Southwest Washington, Providence St. Peter Hospital, Providence Centralia Hospital**

Comments were received in an e-mail dated September 17, 2008.

I am a donor and strong supporter of the Hands On Children's Museum. HOCCM is an important resource for us in our efforts to recruit young doctors. I am writing urging your special assistance to achieve DoE approval to proceed. The private/public nature of this project requires timely action from all parties. While I am part of the private effort to raise substantial sums of money to create this new space, our success depends on public entities fulfilling their duties with a similar and appropriate level of urgency. DoE is the public body currently with the greatest amount of control over this need for timely action. I lead a large, complex organization and know that more frequently than not, my organization seeks more time to accomplish something rather than less if we do not strive every day to achieve milestones that force us to move at a pace out of our comfort zone. I believe the circumstances of this development project requires a similar approach.

Thank you for what you do for all of us.

### **Ecology Response**

Comment noted. Thank you for taking the time to comment! We appreciate your support for the rapid cleanup of the site. We will continue to update you on the cleanup progress.

## **Comment #15: Jessica McKeegan Jensen, Jensen Kokis Law PS**

Comments were received in an e-mail dated September 17, 2008.

I support the East Bay Environmental Clean up and the projects that are planned for that site once the cleanup is complete.

### **Ecology Response**

Comment noted. Thank you for taking the time to comment! We appreciate your support for the cleanup of the site. We will continue to update you on the cleanup progress.

## **Comment #16: Jeanette Hawkins, Triway Enterprises**

Comments were received in an e-mail dated September 18, 2008.

Thank you for giving me the opportunity to comment on the future clean-up of the Port of Olympia's plan for their East Bay Properties. I hope that the coordinated efforts of the Department of Ecology with the local jurisdictions, entities and organizations that are depending upon this clean-up effort are efficient and effective.

It is extremely important that Ecology respond to the needs of the Port and City of Olympia to quickly oversee this long awaited clean-up effort. As you know, the planning process and public input leading up to this effort has gone on for years. Finally, the Port is poised to implement its Comprehensive Plan for this section of valuable land in downtown Olympia. Additionally, as a past board Member for Olympia at

LOTT, the plans for an educational center and Administrative Headquarters have also been in the planning stages since the late 1990's. The search for a permanent home for the Children's Hands-On Museum has also been ongoing. Their use of PFD funding also mandates an efficient clean-up.

Unfortunately, there are now eight identified clean-up sites in Budd Inlet. The public has not yet grasped the importance, cost and timeliness required for this effort. I also believe that the functionality and productivity of Port properties, and the important uses that can only be located there, add to the urgency of this clean-up effort. For the City of Olympia, the redevelopment of its waterfront properties is crucial for its future vitality as a waterfront city.

## **Ecology Response**

Comment noted. Thank you for taking the time to comment! We appreciate your support for the efficient and effective cleanup of the site. We will continue to update you on the cleanup progress.

## **Comment #17: Dan Phillips, Batteries Plus, Owner**

Comments were received in an e-mail dated September 18, 2008.

As a resident of Olympia for 55 years, a private business person and owner of Batteries Plus, and a current member of the Thurston County Business Roundtable, I request that you do whatever is necessary to facilitate and expedite the East Bay Cleanup. We have a window of opportunity for our community. The timely completion of the cleanup will benefit the entire South Sound Region.

## **Ecology Response**

Comment noted. Thank you for taking the time to comment! We appreciate your support for the cleanup of the site. We will continue to update you on the cleanup progress.

## **Comment #18: Pat Rants, President, The Rants Group**

Comments were received in an e-mail dated September 19, 2008.

I am writing to urge timely action on the approvals of remediation for the Port's East Bay project. I am not directly involved in the project but I am very interested in cleaning up unusable land and improving downtown Olympia. I feel that the parcels sitting unused and contaminated are not doing any good for the citizens, the Port, the City of Olympia or the Hands on Children's Museum. I hope and believe we can balance safe cleanup with speed.

I appreciate any help you can give in moving this project along quickly.

## **Ecology Response**

Comment noted. Thank you for taking the time to comment! We appreciate your support for the timely cleanup of the site. We will continue to update you on the cleanup progress.

## **Comment #19: Trent Hart, Anderson Boone Architects**

Comments were received in an e-mail dated September 19, 2008.

I wanted to take a brief moment to urge you and the Department of Ecology to approve the proposed clean-up program for the East Bay Re-development as quickly as possible based on the science available. This action will revitalize a blighted area with economic redevelopment and move forward clean-up in a contaminated area that is the right thing to do. The real issue becomes time. Without a timely product from DOE, this will be a lost opportunity for all concerned. Thank you for your time and consideration in this matter.

## **Ecology Response**

Comments noted.

## **Comment #20: John A. Clees, Director Tax Services, RSM McGladrey, Inc**

Comments were received in an e-mail dated September 19, 2008.

I am contacting you as a citizen of Olympia and a member of the Roundtable of Thurston County to encourage a reasonable and expedited approval of the clean-up program that will enable the redevelopment of one of the most unsightly areas of our capitol city. I am concerned that without immediate attention by the Department of Ecology, the Olympia – Thurston County communities will lose an incredible opportunity for a project that will have a positive effect on our community for generations. Thanks for you attention.

## **Ecology Response**

Comment noted. Thank you for taking the time to comment! We appreciate your support for the timely cleanup of the site. We will continue to update you on the cleanup progress.

## **Comment #21: Pam Folsom, Folsom Public Relations**

Comments were received in an e-mail dated September 22, 2008.

I am writing in support of the partnership between DOE and the Port of Olympia to cleanup contamination at the East Bay Redevelopment site in Olympia. A consortium including the City of Olympia, LOTT Alliance, Port of Olympia and Hands On Children's' Museum are all committed to this effort and a positive outcome for all involved.

Clean up of the site is necessary, and highly desirable, to reverse soil and groundwater damage from historic activities, and prepare the land for future uses. The site, at a prime water front location, is currently a detriment to the area. Clean-up will allow redevelopment and a variety of community uses, including private investment which will enhance the tax base.

I support a reasonable and timely outcome in this matter.

## **Ecology Response**

Comment noted. Thank you for taking the time to comment! We appreciate your support for the timely cleanup of the site. We will continue to update you on the cleanup progress.

## **Comment # 22: Diana Stroble, board member of HOCM**

Comments were received in an e-mail dated September 24, 2008.

I am emailing to encourage the speedy approval process for East Bay clean-up to allow construction of the new Children's Museum. The Museum will to a standard appropriate to the property use by children and families. This is a higher standard than any other similar property in the downtown area. This is a rare opportunity to clean-up a brownfield site with private and public investment.

### **Ecology Response**

Comment noted. Thank you for taking the time to comment! We appreciate your support for the timely cleanup of the site. We will continue to update you on the cleanup progress.

## **Comment #23: Brian Forth, President, Sitecrafting**

Comments were received in an e-mail dated September 24, 2008.

I am writing to support the joint clean up effort for the East Bay Project. This project is a win for all the businesses, families and the children of Thurston County. The fact that the property clean up will be consistent with the it's use by children and families will give citizens and businesses the confidence to visit and invest in this unique project.

I ask as a board member of the Hands On Children's Museum and as a regional business owner to provide reasonable and timely outcome so the project can move forward.

### **Ecology Response**

Comment noted. Thank you for taking the time to comment! We appreciate your support for the cleanup of the site. We will continue to update you on the cleanup progress.

## **Comment #24: Sam Armour, Armour Vickerman PLLC**

Comments were received in an e-mail dated September 24, 2008.

I am writing to you to say that I support the clean-up of this site and urge you to do all you can to move the process along in the most expedient manner possible. This project will be a very positive addition to downtown Olympia. I know you are hearing these points from others in the community, but as president-elect of the board of directors of Hands On Children's Museum, I want to reiterate that:

- The Museum plans to clean-up the site consistent with its use by children and families
- It will be cleaned to a higher standard than any other similar property in the downtown area
- This is a rare opportunity to clean-up a brownfield site with private and public investment

We thank you very much for the work you are doing and look forward to developing this site for the new Hands On Children's Museum.

## **Ecology Response**

Comment noted. Thank you for taking the time to comment! We appreciate your support for the timely cleanup of the site. We will continue to update you on the cleanup progress.

## **Comment #25: Caroline Bell**

Comments were received in an e-mail dated September 24, 2008.

I wanted to send a short note in support of the joint clean-up effort of the East Bay site. As a member of the board of the Hands On Children's Museum I could not be prouder of the efforts being made to clean up this site to a higher standard than any other similar property in the downtown area.

The museum board, it's staff and members are committed to making this site safe for children and families. This area will transform from being a blight on our community to a regional destination anchored by a beautiful new children's museum.

Our community is so lucky to be benefiting from the incredible consortium of participants from the private and public sector to make the dreams of this community a reality. I look forward to watching Olympia and the outlying communities thrive as this project progresses.

## **Ecology Response**

Comment noted. Thank you for taking the time to comment! We appreciate your support for the cleanup of the site. We will continue to update you on the cleanup progress.

## **Comment #26: Rich Razgaitis, President, North America: Univera, Inc**

Comments were received in an e-mail dated September 24, 2008.

My email to you is to request your full support in the development on the new Hands-On Childrens Museum in downtown Olympia.

From both a personal and professional level I am ecstatic with this development and what it will do for our children, our taxpayers, and the culture of our city. In fact, it is this enthusiasm and optimism that has led me to join the Board about six months ago. Prior to that, I was a many-year member of the HOCM where my family has used its outstanding resources with much acclaim.

This new project will provide:

- Economic growth, a shot of adrenaline, to a very blighted area.
- Clean up. The DOE will benefit and be pleased with the clean up, far better than to leave it uncleaned.
- This development will help anchor significant high quality private investment in the form of controlled development.

What do we need? Simply, your full support and to provide the HOCM a very reasonable and timely outcome.

This not only is an invaluable project to the Community, but it also offers the opportunity to those involved—including the DOE—to leave an imprint and legacy into what will become one of the most

significant milestones accomplished in our City.

Thank you for your consideration and support.

### **Ecology Response**

Comment noted. Thank you for taking the time to comment! We appreciate your support for the timely cleanup of the site. We will continue to update you on the cleanup progress.

### **Comment #27: John and Sally Warjone, HOCM Capital Campaign Tri Chairs**

Comments were received in an e-mail dated October 1, 2008.

We are writing to encourage you to keep the East Bay clean up project moving in a timely manner. Our project to build the new Hands On Children's Museum is under a deadline that must be met in order for the PFD funds to be released. The entire East Bay project is going to be a benefit to the whole community and it is important that the clean up be done as soon as possible.

Thank you for giving this matter your timely consideration.

### **Ecology Response**

Comment noted. Thank you for taking the time to comment! We appreciate your support for the timely cleanup of the site. We will continue to update you on the cleanup progress.

### **Comment #28: Greg Wingard**

Comments were received in an e-mail dated October 2, 2008.

Thank you for taking the time to talk to me earlier today. As you are aware, I came down to Ecology last week to review the Ecology file on the East Bay Redevelopment site, which you made available. I made a limited number of copies from the file to assist me in my comments on the site Draft Agreed Order, which is currently undergoing public review and comment. I received an email from Susan Baxter yesterday afternoon indicating that the copies had just been put in the mail, meaning I won't get them until Friday. As a result I would appreciate your extending the comment period until Monday to give me the opportunity to include the additional materials from Ecology's file in my comments.

My understanding from our conversation earlier is that you will be able to accept the comments Monday and include them in the Responsiveness Summary for the Agreed Order. Your assistance in this regard is appreciated.

### **Ecology Response**

I just want to make it clear that the formal dates for the comment period will not be changed. However, I will include your comments if you get them to me on Monday.



## **Comment #29: Stanley Stahl**

Comments were received in an e-mail dated October 2, 2008.

Dear Mr. Teel:

It is apparent that you have put a lot of thought and good science into formulating this Agreed Order, more so than past cleanup scenarios done by Ecology. Especially worthy of compliment is the withdrawal of this cleanup from the Voluntary Cleanup Program, which was initially set with the Port and was clearly inadequate to deal with this sized and complicated contaminated site, into the present Agreed Order which is much more appropriate for this situation, and also the way you have addressed the dilution of the toxins found in prior test results due to the improper decommissioning of the artesian wells, demanding that the wells be properly decommissioned at this time, and calling for a period of time for stabilization of the ground water, so further sampling will reflect the actual levels of contamination..

It is not so apparent that you have had to deal with major pressures from the economic considerations coming from the development contingencies looking to get a fast track in terms of constructing their projects in the most expedient fashion. Those development contingencies in this case involve the Port of Olympia, the City of Olympia, the LOTT Alliance, the Hands on Children's Museum, and further tied in with the Thurston County Chamber of Commerce and the Economic Development Council. That's quite a force to resist. Congratulations.

However, you still have buckled in to the commencement of certain work simultaneous with the public comment period, which is not the proper protocol. One such work projects is the testing necessary to obtain a construction stormwater permit. This testing is out of synch, as it should have been done long before, and it is questionable whether it is legal to do at this time? If not, it should be halted immediately.

There is other preliminary development work being allowed to commence in the Agreed Order, which is not detailed enough for the public to understand, which is premature before the testing is first done to see what contamination is needing to be cleaned up. Why else would the regulations call for a public comment period, if not to hold up any work until that public comment is finished and considered, followed by remedial cleanup work, and surely before any infrastructure is given out to bid and any installation work is begun.

The basic protocol for a recognized toxic MTCA site is to comprehensively identify the contamination (with full unobstructed public comment), properly cleanup the contaminated site BEFORE work is commenced, and only then go forward with development.

Ecology has only one way to go legally with cleanup at this site – the Agreed Order needs to be altered to conform with regulatory statutes as outlined above.

Stanley Stahl

## **Ecology Response**

Individual comments and responses are broken down below.

### **Comment 29.1**

It is apparent that you have put a lot of thought and good science into formulating this Agreed Order, more so than past cleanup scenarios done by Ecology. Especially worthy of compliment is the withdrawal

of this cleanup from the Voluntary Cleanup Program, which was initially set with the Port and was clearly inadequate to deal with this sized and complicated contaminated site, into the present Agreed Order which is much more appropriate for this situation, and also the way you have addressed the dilution of the toxins found in prior test results due to the improper decommissioning of the artesian wells, demanding that the wells be properly decommissioned at this time, and calling for a period of time for stabilization of the ground water, so further sampling will reflect the actual levels of contamination..

It is not so apparent that you have had to deal with major pressures from the economic considerations coming from the development contingencies looking to get a fast track in terms of constructing their projects in the most expedient fashion. Those development contingencies in this case involve the Port of Olympia, the City of Olympia, the LOTT Alliance, the Hands on Children's Museum, and further tied in with the Thurston County Chamber of Commerce and the Economic Development Council. That's quite a force to resist. Congratulations.

## **Ecology Response**

Comment noted. Thank you for taking the time to comment!

### **Comment 29.2**

However, you still have buckled in to the commencement of certain work simultaneous with the public comment period, which is not the proper protocol. One such work projects is the testing necessary to obtain a construction stormwater permit. This testing is out of synch, as it should have been done long before, and it is questionable whether it is legal to do at this time? If not, it should be halted immediately.

There is other preliminary development work being allowed to commence in the Agreed Order, which is not detailed enough for the public to understand, which is premature before the testing is first done to see what contamination is needing to be cleaned up. Why else would the regulations call for a public comment period, if not to hold up any work until that public comment is finished and considered, followed by remedial cleanup work, and surely before any infrastructure is given out to bid and any installation work is begun.

The basic protocol for a recognized toxic MTCA site is to comprehensively identify the contamination (with full unobstructed public comment), properly cleanup the contaminated site BEFORE work is commenced, and only then go forward with development.

Ecology has only one way to go legally with cleanup at this site – the Agreed Order needs to be altered to conform with regulatory statutes as outlined above.

## **Ecology Response**

Comments noted. Some sampling and testing activities occurred during the comment period. This sampling and testing work was conducted by the Port of Olympia (Port) during their preparation of a National Pollution Discharge Elimination System (NPDES) Permit application for construction dewatering. The NPDES Permit is a separate permit that is required by Federal law. However, no construction activities occurred or were approved to occur by Ecology during this period. As indicated in the Agreed Order (AO), both the draft Interim Action Work Plan and the draft Remedial Investigation (RI) Report will be made available for public comment during a designated public comment period.

The Port was scheduled to begin some of the RI sampling during the comment period (but not complete) to expedite the investigation. In order to ensure that full public comment was considered, Ecology

outlined in the AO that it might require the Port to do additional RI work if Ecology saw fit. This would have allowed the RI to move forward while still upholding public involvement requirements of MTCA. Based on public comments, Ecology had the right to ask for additional investigation – if appropriate. The Port did not, however, begin RI sampling as planned. All RI activities will begin after the public comment period has ended.

## **Comment #30: Heather Trim, Urban Bays and Toxics Program Manager, People for Puget Sound**

Comments were received in an e-mail dated October 2, 2008.

To Mr. Teel,

We are writing to comment on *East Bay Redevelopment Cleanup Site Agreed Order*, dated September, 2008.

The site is located at located at 315 Jefferson Street NE in Olympia and has evidence of soil and/or groundwater contamination at levels that exceed the MTCA cleanup standards for all of the following constituents: total petroleum hydrocarbons (TPH), carcinogenic polycyclic aromatic hydrocarbons (cPAHs), chlorinated dibenzo-p-dioxins and chlorinated dibenzofurans (dioxins/furans), PCBs, and metals..

People For Puget Sound is a nonprofit, citizens' organization whose mission is to protect and restore Puget Sound and the Northwest Straits.

Our comments follow:

1. **Construction proceeding.** We understand that construction is occurring during this public comment period. This is not in accord with a genuine public review process.
2. **Sampling analysis.** Our experience has been that many soil/sediment cleanup sites in Puget Sound have had inadequate sampling that required more sampling to fill in later (and the Port's record to date at this site appears to follow a similar pattern). We believe that a grid approach is more effective in the long run rather than focusing on areas known or suspected to be contaminated. When you get to the sampling stage, we suggest that the sampling site selection be reviewed to ensure that sampling will be definitive and additional sampling for the basic characterization won't be needed.
3. **Climate change.** We believe that all work done in or adjacent to Puget Sound should consider potential future impacts due to Climate Change, including this site.
4. **Web access to documents.** The Agreed Order states that several recent documents have been submitted to Ecology including several Environmental Site Assessments. These documents should be posted on the web page.
5. **Connection to Budd Inlet.** Given the location of this site, it is imperative that sampling, analysis and development of a conceptual model be conducted in a manner that helps address source questions related to Budd Inlet contamination.

Thank you for the opportunity to comment on the draft document. Please contact me with questions at (206) 382-7007 X215.

Sincerely,



Heather Trim  
Urban Bays and Toxics Program Manager

## **Ecology Response**

See below for responses to specific comments.

### **Comment 30.1**

Construction proceeding. We understand that construction is occurring during this public comment period. This is not in accord with a genuine public review process.

## **Ecology Response**

Thank you for taking the time to comment! Please see the response to comment 29.2 on page 26.

### **Comment B 30.2**

Sampling analysis. Our experience has been that many soil/sediment cleanup sites in Puget Sound have had inadequate sampling that required more sampling to fill in later (and the Port's record to date at this site appears to follow a similar pattern). We believe that a grid approach is more effective in the long run rather than focusing on areas known or suspected to be contaminated. When you get to the sampling stage, we suggest that the sampling site selection be reviewed to ensure that sampling will be definitive and additional sampling for the basic characterization won't be needed.

## **Ecology Response**

Comment noted.

### **Comment 30.3**

Climate change. We believe that all work done in or adjacent to Puget Sound should consider potential future impacts due to Climate Change, including this site.

## **Ecology Response**

Regarding climate change and sea level rise in general, there is some information available on Ecology's web site (<http://www.ecy.wa.gov/climatechange/index.htm>, <http://www.ecy.wa.gov/climatechange/risingsealevel.htm>) and <http://www.ecy.wa.gov/pubs/0801008c.pdf>. Regarding the East Bay Redevelopment Site in particular, potential sea level rise will be considered when planning cleanup work at the Site.

## **Comment 30.4**

Web access to documents. The Agreed Order states that several recent documents have been submitted to Ecology including several Environmental Site Assessments. These documents should be posted on the web page.

## **Ecology Response**

At this time, Ecology does not have the web or staff resources to post all documents on our website. However, all documents are available for review upon request. Please call our records coordinator at (360) 407-6365 if you would like to request an appointment.

## **Comment 30.5**

Connection to Budd Inlet. Given the location of this site, it is imperative that sampling, analysis and development of a conceptual model be conducted in a manner that helps address source questions related to Budd Inlet contamination.

## **Ecology Response**

Comment noted.

## **Comment #31: Lee Reimer**

Comments were received in an e-mail dated October 2, 2008.

Dear Mr. Teel:

We need the testing necessary to obtain a construction stormwater permit. This testing should have been done long ago. and it is questionable whether it is legal to do at this time?

The Agreed Order, which is the testing, is first done to see what contamination is needing to be cleaned up. We need remedial cleanup work. This needs to be done before any infrastructure is given out to bid and any installation work is begun.

We must identify the contamination. Then we need the full unobstructed public comment period. We must properly cleanup the contaminated site BEFORE work is started. Then go forward with development. The Agreed Order needs to be altered to conform with regulatory statutes.

Thanks, Lee Reimer

## **Ecology Response**

Please see below for responses to specific comments.

### **Comment 31.1**

We need the testing necessary to obtain a construction stormwater permit. This testing should have been done long ago and it is questionable whether it is legal to do at this time?

## **Ecology Response**

Thank you for taking the time to comment! Please refer to response to comment 29.2 on page 26.

### **Comment 31.2**

The Agreed Order, which is the testing, is first done to see what contamination is needing to be cleaned up. We need remedial cleanup work. This needs to be done before any infrastructure is given out to bid and any installation work is begun.

## **Ecology Response**

Comment noted.

### **Comment 31.3**

We must identify the contamination.

## **Ecology Response**

The Agreed Order requires that the Remedial Investigation determine the extent of contamination.

### **Comment 31.4**

Then we need the full unobstructed public comment period.

## **Ecology Response**

Ecology has included several opportunities for public involvement during this process. Beyond the current comment period for the Agreed Order another comment period and public meeting is planned for the interim action work plan. A comment period will also be held for the remedial investigation report.

## **Comment 31.5**

We must properly cleanup the contaminated site BEFORE work is started. Then go forward with development. The Agreed Order needs to be altered to conform with regulatory statutes.

### **Ecology Response**

Ecology is committed to ensuring that the Site is cleaned up to a level that will be protective of human health and the environment. At any time through the cleanup process, Ecology may determine that additional investigation and cleanup is necessary if there is evidence that the cleanup is not protective.

Under Washington's Model Toxics Control Act (MTCA), Ecology does not have the authority to direct the future land use through the cleanup process. Rather, Ecology considers the site's historical and current uses, projected future use, and local zoning designations in making a determination of the appropriate cleanup levels to be applied in a cleanup.

The Agreed Order currently conforms to regulatory statutes.

## **Comment #32: Arthur West**

Comments were received in an e-mail dated October 2, 2008.

Please incorporate by reference into this comment all of my pleadings and all exhibits in the Shoreline Hearings Board cases SHB #08-013 AND SHB #08-020 on this Agreed Order, as these pleadings and exhibits concern the East Bay Development project on this site covered by this Agreed Order.

This Agreed Order as it is written, will not adequately cleanup this site to protect the environment of this area, and this East Bay Redevelopment project is clearly a development project not a cleanup project, and therefore it is inappropriate to make this Agreed Order apply to such a development project.

### **Ecology Response**

Comment noted. Thank you for taking the time to comment!

## **Comment #33: Greg Wingard**

Comments were received in an e-mail dated October 6, 2008.

Dear Mr. Theel:

The purpose of this letter is to comment on, and more specifically request clarifications of, and changes to the referenced Fact Sheet and Agreed Order for the East Bay Redevelopment Model Toxics Control Act site, in Olympia, Washington.

There are a number of points that are worth mentioning at the outset.

- Ecology's decision to put the East Bay Redevelopment site (the site) under Agreed Order, rather than in the Voluntary Cleanup Program was a positive step.

- Ecology’s decision to review information related to inappropriately abandoned, or broken wells at the site, and require the Port to address this issue is also a recent positive step, and addresses a long-term community concern not adequately dealt with to date.
- Ecology’s decision to allow the Port of Olympia to implement the first phase of the Remedial Investigation (site sampling), prior to the Agreed Order being in force and before the public has any chance to review and comment on it is questionable at best.
- Better explanation of the selection of the site boundaries and exclusion of adjoining areas from the boundary is needed.
- The Fact Sheet needs some changes to be consistent with the AO and other exhibits, and to provide clearer and more consistent information to the public on the milestones of the project and the resulting public process.

## **Fact Sheet**

The Fact Sheet states that “The first phase of the Remedial Investigation will begin during this comment period.” This is unacceptable. While a Voluntary Cleanup Program (VCP), cleanup can move forward with little or no public involvement, an Agreed Order cleanup must provide certain community participation rights. In this case Ecology has decided to put the site under Agreed Order, and allow significant elements of the required work to be done prior to that order being in force. Site sampling plans have a very clear and direct impact on determining the nature and extent of site actions, including technologies selected and final objectives met. In addition, site deficiencies in previous data collection efforts is part of the reason given in this AO for why the site was transferred to an Agreed Order from the VCP. In such a case, any additional work to be done at the site should be subject to all the requirements under MTCA for Agreed Orders, including public participation elements to be (if for no other reason) consistent with the logical underpinnings for the AO.

Ecology has allowed sampling to be agreed to and implemented without public review or comment, and prior to the adoption of the Agreed Order. This unreasonably limits community rights under MTCA, and hinders the public in being involved in the critical formative process of the activities that should be within the four corners of the Agreed order. While Ecology has said that the public will be able to review the plans and provide comment after the work is already under way, or done this does not fix the problem. This approach besides fundamentally negating community rights under the MTCA process for Agreed Orders creates a very difficult situation where additional work sought by the community would substantially increase costs over what the normal process would entail. Also, there is substantial concern as to why such negation of community rights was deemed necessary. There is one and only one reason identified by Ecology and the Port for this key defect in the MTCA Agreed Order process, which is the Port’s plans and construction schedule for the site. It is not acceptable for the Port of Olympia and Ecology to predetermine and truncate public process to meet an artificial construction schedule on the part of the Port. It is the data collected from the site, and the alternatives selected for remediation that should determine site use. It appears that Ecology and the Port are intent in taking the opposite tail wags the dog approach, which is not in the best interest of the community, the environment or in implementation of MTCA.

While it is in everybody’s interest to have timely progress in the collection of data and remedial action on the peninsula, including the East Bay Redevelopment site, the problems to be addressed have been the subject of public debate for decades and the sources of pollution may date back as far as the late 1800’s. In that context to inform the public that while the site will be placed under an Agreed Order, but critical data collection will be decided on before the public comment period is even completed is inexplicable and fails to meet minimal expectations.



Under what authority does Ecology propose to implement portions of an Agreed Order prior to public comment, including issuing a responsiveness summary, and signing the Agreed Order making it effective?

Has Ecology determined that there is an emergency condition that requires violating the public's right to comment and involvement in decisions regarding Agreed Orders?

If so, what is the legal basis for Ecology to unilaterally implement elements of an Agreed Order with no community input process as required under MTCA, and prior to the order being effective?

The Fact Sheet appears to say that the Remedial Investigation process will be started, without public review or comment. There is to be review of the Interim Action Work Plan, along with a public meeting at some point in the future. The Port will then implement the Interim Action during construction of roads and utilities. This time line is inconsistent with what information has been previously provided by the Port and Ecology, which has indicated that road and utility construction will be done during data collection, or the RI phase. Ecology should better clarify in the Fact Sheet that previous plans for construction during sampling have been abandoned and are not part of the current Agreed Order process.

At page 9, of the Agreed Order the first step described (Section VII. Work to be Performed, A.), is the Interim Action Plan, which is to be submitted in 60 days of the effective date of the Agreed Order. By this, given that the Agreed Order is a legally binding document, it appears that all previous steps, including the RI work plan, the RI work (sample collection/data analysis), will happen (by necessity), prior to 60 days after the effective date of the Agreed Order and with no public review and comment. This is confusing, inconsistent with Ecology's previous stated intent and needs to be clarified.

It is clear that I disagree with the Ecology's decision to implement the sampling portion of the RI prior to public review and prior to the effective date of the Agreed Order. Irrespective of that disagreement, Ecology needs to clarify in the Fact Sheet and Agreed Order exactly what activities are being allowed prior to the effective date of the order and exactly what activities are post AO. Likewise in describing the Public Participation Plan (PPP) Ecology should explain the unusual way it is implementing the RI, and specifically how this impacts the PPP, and how Ecology intends to accept, consider and potentially act on, and in what time frame, public comment on the sampling plan portion of the RI.

The Interim Action Plan is described in sub section A., as described above the Remedial Investigation Plan is described in sub section C., which makes little sense and adds to the confusion, as the steps should be laid out in a sequential fashion consistent with the time line milestones. In sub section C., at page 10, the Agreed Order appears to confirm that Ecology has no intention of providing the RI Plan to the public, to allow public comment, or to hold a public meeting.

In reviewing the entirety of this section, there is no mention of the construction of roads and utilities, the timing of this needs to be clear to the public, especially due to previous public comments by the Port and Ecology relative to sampling and construction time lines, inconsistent with the current Agreed Order. Further in turning to page 12, Section K., Schedule of Deliverables where all time line items should be made clear, confusion remains. While at least the work items appear in the right order in this matrix, there is no information at all when road and utility construction will happen. It appears from the text that Ecology does not intend to have any public process related to data collection (post effective date of the Agreed Order), for at least 5 months from now, after the draft RI report is issued. This needs clarification, as this would severely hamper right of the community to effectively comment on the RI data collection plan in any relevant way. Apparently in two months after the effective date of the Agreed Order, Ecology will allow comment on the draft Interim Action Plan, but given that site decisions and outcomes are driven by data collection this Agreed Order appears to grossly underestimate the importance of data

collection in determining site outcomes and the need for public involvement prior to site data commitments being made.

Ecology and the Port have taken months to negotiate this Agreed Order, all the while being aware of the proposed construction schedule that seems to be driving the decision to cut corners on the public process. It is unfortunate the first thing to get cut out of the Agreed Order schedule to meet the Port's construction schedule is public participation. I am also concerned that Ecology has taken unilateral action as part of an Agreed Order during the public comment period for that same Agreed Order and not even adequately explained exactly what actions of Ecology and the Port will occur without public review or input.

The site background section of the Fact Sheet should be improved. In addition to the current information in that section, a sentence should be added to state that the site has been extensively filled since the late 1800's including with waste materials and dredge spoils (see section IV., C, of the AO). This is consistent with geo-tech work and chemical sampling as well as historical records for the area.

As per the volume of comments above the chart on opportunities for public involvement needs to be changed to indicate when public involvement is being planned for the Remedial Investigation, as the current Fact Sheet chart makes it appear that such public opportunity is simply being eliminated.

The Fact Sheet includes maps on the site, showing pre-determined development and the boundaries of the "site". It is unclear as to why the northwest boundary is located where it is. The current boundary line runs through the middle of an existing building, which doesn't make much sense, and also eliminates consideration of an area labeled as "future development". This doesn't make much sense unless previous sampling has already determined this area to be free of contamination. The site boundaries should be based on existing knowledge of contamination from sampling and historical records, and site sampling should be sufficient to define the lateral extent of contamination, which should adjust the site boundaries as needed. What were the considerations that lead to the present site boundaries and why is the area identified as future expansion excluded from consideration as part of the site now? This would not be as confusing if Ecology clearly marked the LOTT VCP site boundary on the Fact Sheet maps. Even though this doesn't address the substantive concerns mentioned in further detail below, it would at least provide some visual rationale for what otherwise looks very odd and random.

## **Agreed Order**

I. Introduction – The AO is not accurate in that it cites requirements of the order related to the RI that are being done outside the Agreed Order, prior to the public comment, responsiveness summary, or the effective date of the order.

IV. Definitions – The AO claims in section A., that the boundary of the site is defined by the extent of contamination. At the same time, Ecology has indicated that the lateral extent of contamination is not defined and that was part of the rationale given for placing this site under this AO, rather than allowing it to continue under the Voluntary Cleanup Program (VCP). This inconsistency needs to be corrected.

What sampling (under the RI currently being implemented), does Ecology intend to rely on to determine if the LOTT site (VCP), and the site wastes are co-mingled and the LOTT site needs to be added to the site as per the AO in section A, or if other lateral contamination is present beyond the current site boundaries?

V. Findings of Fact – In sections A-S Ecology provides detailed information on hand about historical operations, including some very limited information on dredge and fill, previous shortcomings in the work done by the Port resulting in the decision to put the site under the present AO and require the additional interim work the AO describes. This section makes it clear why it is important for the community to have access to, be able to review, and comment on the RI, as the RI is supposed to fix the

defects noted by Ecology above. The failure to have the RI included as part of the AO time line, that is that the RI would commence after the completion and effective date or authorization of the AO, and be a vital element of the comment process, makes it very difficult for the public to comment on the adequacy of the Agreed Order. The RI work plan is vital information that rather than being presented, as it should during the AO public process, is going to be a tag on afterthought after the public comment on the AO is closed. This is a critical flaw in the AO process that hinders adequate and meaningful opportunity for public comment during the AO public comment period.

VI. Ecology Determinations – The AO at section E., claims that the Port’s construction plans are in essence what makes the AO necessary and how it meets the requirements for interim actions under MTCA. There needs to be strict limits on how much of a driver construction plans and schedules are for MTCA site time lines including meeting requirements and public participation. All parties involved in this matter have known for decades that areas of the peninsula are contaminated, and the use of industrial dredge and fill materials across the entire area is wide spread. This knowledge should have allowed the Port, City of Olympia, LOTT and Ecology to implement actions required under MTCA in an orderly process that provided adequate time lines for all MTCA requirements including the implementation of this AO, inclusion of the RI as a necessary element in the AO up front, and adequate public participation including RI review and comment prior to Ecology approval. Instead the Port and partners are using a contrived construction crisis or emergency to limit public participation. Ecology should not have given in to this pressure, or similar pressure in the future.

VII. Work to be Performed – The layout of this section is not logical or sequentially based. It appears as if the RI will happen after the Interim Action Work Plan, though this is not true. It states the RI work plan is to be submitted within 30 days of the effective date of the AO, even though the cited work plan is already submitted and work on it will be underway prior to the effective date of the AO. Ecology should develop a mile stone graph that includes all elements of the work to occur as part of this order, including the RI, which is partially under and not under this order. This section of the AO should then be re-written to comport with the actual time lines consistent with the milestone graph. The graph could be added to the Fact Sheet. This would solve a bunch of current confusion and assure that all elements of discussion of work to be done and related time lines are consistent and easily understood by the public. This revision should specifically include accurate detail as to the draft RI work plan and the after the fact review Ecology proposes as a make do measure for public participation.

Section I., is unclear and lacks detail. Specifically, the reason given for truncating public participation so far has been the Port’s emergency construction schedule. This “emergency” condition does not end at the completion of, and is not completely addressed by the AO. Rather, this pressure will continue to exist through the actually planned construction at the site. As such the AO, and this section of it sets up the public for further corner cutting in the future, an outcome which is completely unacceptable. Steps need to be taken now to assure that doesn’t happen and the AO should clearly indicate to the Port that no further short cuts would be allowed by Ecology.

Section K., I was afforded the opportunity to briefly look at the draft RI work plan and Ecologies comments to the Port, which just predated my review. When will the final RI be available? Will the Port be starting any RI related work prior to Ecology’s review and approval of the final, rather than draft RI work plan?

VIII. Terms and Conditions of Order – Under section A., related to public notice, it is improper for Ecology to allow work on the RI that should (and to an extent is) be included in the AO, prior to the public comment period being complete, a responsiveness summary being issued, Ecology determining that the AO is complete, meets the requirements of law, is in the public interest, and signing and making effective the subject AO.

Section P, deals with compliance with laws. The federal Clean Water Act requires that the Port have an NPDES permit for the site (facility as defined by the AO) to cover any process, or stormwater discharges. This section, including the provisions in sub-section 3., is not consistent with the requirements of federal law. Ecology does not have the authority to waive any requirement of federal law related to NPDES permits, including but not limited to “procedural” requirements. This is not a matter of making a determination of whether such action would result in “loss of approval from a federal agency,” but rather that the agency lacks such authority under any circumstance related to the exercise of MTCA authority. This section of the AO must be rewritten so as to be clear that all requirements of federal law related to permits must be met by the Port, and to further eliminate any impression that Ecology can waive any requirements of federal law.

Exhibit A – See comments above in the final paragraph on the Fact Sheet section of the comments. Also see comments under Section IV. Definitions above.

Exhibit B – The northwest boundary line of the site appears inconsistent with the historical information presented in the exhibit. Which shows both an industrial saw mill, and more importantly a “refuse fire area”, immediately outside the northwestern extent of the site boundary. Existing data has confirmed the presence of combustion related chemicals or wastes at levels that exceed MTCA standards on the property. The failure to include these areas, which appear to be in the “future expansion area” (LOTT VCP site), does not make any sense from a technical perspective.

Exhibit C – The same comments as for Exhibit B apply. Maybe it is a matter of scale, but the fire refuse area, AOC 01, defined area seems to be touching the northwest corner of AOC 01. In fact it is clear from the site boundary configuration that the boundary, which is a straight line to that point veers significantly to the east apparently just to avoid running through the middle of AOC 01. It also appears that part of AOC 01 is outside the boundary of both the VCP site and the AO site.

Exhibit D – Why is the northern border of the VCP site shorter than and inconsistent with the border of the Phase I area defined in this exhibit? This is particularly confusing as potential problems were noted in the Phase I site map, and an Area of Concern is noted just north of both the LOTT VCP, and AO site boundaries. Did existing data from the Phase II or subsequent work determine this area to not be affected by contamination? If so why did Ecology determine that work was adequate, and much of the rest of the work was not?

Exhibit E – The exhibit should explain in sufficient detail why certain actions in the RI were necessary to carry out, outside the Agreed Order, and without public participation, and what steps are being taken to account for that in the Public Participation Plan. It is not appropriate for the PPP to be silent, and not adequately explain how Ecology is dealing with this including its stated attempt to offset or replace the rights truncated by Ecologies alternative process for the RI.

Exhibit F – The exhibit states, “work performed shall be in accordance within the substantive requirements of any applicable law or regulation.” As to item 1., on the list it covers the NPDES permit program under relevant state and federal law. I believe it is unlawful for Ecology to represent that work performed under the AO need only be in accordance with “the substantive requirements”. Ecology has no authority to waive or alter any requirements of the federal Clean Water Act, or to allow work to be done by others that do not meet all federal requirements as written. I request Ecology provide its rationale for taking the position that it need only, or need only require others to meet “substantial requirements” of federal law for MTCA sites, with an Attorney General opinion providing basis for such assertion. If Ecology is unable to provide this, the related language in the AO and this exhibit must be removed so as not to imply (in my opinion illegally) that Ecology has authority to modify, alter, or reduce the requirements of federal law and regulation based on some imagined MTCA authority.

I appreciate the opportunity to comment on this Agreed Order, and look forward to Ecology's response to this and other public comment.

Regards,

Greg Wingard

### **Ecology Response**

Comment noted. Thank you for taking the time to comment! Please see below for responses to individual comments.

### **Comment 33.1**

Ecology's decision to allow the Port of Olympia to implement the first phase of the Remedial Investigation (site sampling), prior to the Agreed Order being in force and before the public has any chance to review and comment on it is questionable at best.

### **Ecology Response**

Please see the response to comment 29.2 on page 26.

### **Comment 33.2**

Better explanation of the selection of the site boundaries and exclusion of adjoining areas from the boundary is needed.

### **Ecology Response**

We disagree that additional explanation is needed. Please examine again the definition of the Site in Section IV of the AO. As stated in the AO, the Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The RI will determine the extent of contamination and the final boundaries of the Site.

### **Comment 33.3**

The Fact Sheet needs some changes to be consistent with the AO and other exhibits, and to provide clearer and more consistent information to the public on the milestones of the project and the resulting public process.

### **Fact Sheet**

The Fact Sheet states that "The first phase of the Remedial Investigation will begin during this comment period." This is unacceptable. While a Voluntary Cleanup Program (VCP), cleanup can move forward with little or no public involvement, an Agreed Order cleanup must provide certain community participation rights. In this case Ecology has decided to put the site under Agreed Order, and allow significant elements of the required work to be done prior to that order being in force. Site sampling

plans have a very clear and direct impact on determining the nature and extent of site actions, including technologies selected and final objectives met. In addition, site deficiencies in previous data collection efforts is part of the reason given in this AO for why the site was transferred to an Agreed Order from the VCP. In such a case, any additional work to be done at the site should be subject to all the requirements under MTCA for Agreed Orders, including public participation elements to be (if for no other reason) consistent with the logical underpinnings for the AO.

Ecology has allowed sampling to be agreed to and implemented without public review or comment, and prior to the adoption of the Agreed Order. This unreasonably limits community rights under MTCA, and hinders the public in being involved in the critical formative process of the activities that should be within the four corners of the Agreed order. While Ecology has said that the public will be able to review the plans and provide comment after the work is already under way, or done this does not fix the problem. This approach besides fundamentally negating community rights under the MTCA process for Agreed Orders creates a very difficult situation where additional work sought by the community would substantially increase costs over what the normal process would entail.

### **Ecology Response**

Community rights are being accounted for during the process. Please see responses to comments 3.3 (page 11) and 29.2 (page 26) .

### **Comment 33.4**

Also, there is substantial concern as to why such negation of community rights was deemed necessary. There is one and only one reason identified by Ecology and the Port for this key defect in the MTCA Agreed Order process, which is the Port's plans and construction schedule for the site. It is not acceptable for the Port of Olympia and Ecology to predetermine and truncate public process to meet an artificial construction schedule on the part of the Port. It is the data collected from the site, and the alternatives selected for remediation that should determine site use. It appears that Ecology and the Port are intent in taking the opposite tail wags the dog approach, which is not in the best interest of the community, the environment or in implementation of MTCA.

### **Ecology Response**

Ecology has included several opportunities for public involvement during this process. Beyond the current comment period, another comment period and public meeting is scheduled for the interim action work plan. Public comment will be gathered before the interim action work begins allowing for an additional opportunity for input.

Under Washington's Model Toxics Control Act (MTCA), Ecology does not have the authority to direct the future land use through the cleanup process. Rather, Ecology considers the site's historical and current uses, projected future use, and local zoning designations in making a determination of the appropriate cleanup levels to be applied in a cleanup

### **Comment 33.5**

While it is in everybody's interest to have timely progress in the collection of data and remedial action on the peninsula, including the East Bay Redevelopment site, the problems to be addressed have been the subject of public debate for decades and the sources of pollution may date back as far as the late 1800's.

In that context to inform the public that while the site will be placed under an Agreed Order, but critical data collection will be decided on before the public comment period is even completed is inexplicable and fails to meet minimal expectations.

Under what authority does Ecology propose to implement portions of an Agreed Order prior to public comment, including issuing a responsiveness summary, and signing the Agreed Order making it effective?

### **Ecology Response**

- According to MTCA Chapter 70.105D 173-340-600(11)(c) – Ecology has the discretion to determine if an agreed order can be effective before the end of the public comment period.
- In the case of East Bay, the Port was scheduled to begin some of the RI sampling during the comment period (but not complete) to expedite the investigation. In order to ensure that full public comment was considered, Ecology outlined in the AO that it might require the Port to do additional RI work if Ecology saw fit. This would have allowed the RI to move forward while still upholding public involvement requirements of MTCA. Based on public comments, Ecology had the right to ask for additional investigation – if appropriate.
- The Port did not, however, begin RI sampling as planned. All RI activities will begin after the public comment period has ended.
- The responsiveness summary is not a formal document required by MTCA. This document is typically, but not always, completed sometime after the end of the public comment period.

### **Comment 33.6**

Has Ecology determined that there is an emergency condition that requires violating the public’s right to comment and involvement in decisions regarding Agreed Orders?

### **Ecology Response**

It is not Ecology’s intention to violate the public’s right to comment. Specific comments in the Agreed Order ensured that public comment would be considered and implemented, if appropriate.

### **Comment 33.7**

If so, what is the legal basis for Ecology to unilaterally implement elements of an Agreed Order with no community input process as required under MTCA, and prior to the order being effective?

### **Ecology Response**

Please see response to comment 33.5 on page 38.

### **Comment 33.8**

The Fact Sheet appears to say that the Remedial Investigation process will be started, without public review or comment. There is to be review of the Interim Action Work Plan, along with a public meeting at some point in the future. The Port will then implement the Interim Action during construction or roads and utilities. This time line is inconsistent with what information has been previously provided by the

Port and Ecology, which has indicated that road and utility construction will be done during data collection, or the RI phase. Ecology should better clarify in the Fact Sheet that previous plans for construction during sampling have been abandoned and are not part of the current Agreed Order process.

### **Ecology Response**

The “previous plans for construction” referred to are draft “in-process” documents. The public will have the opportunity to review the interim action work plan before it is implemented.

### **Comment 33.9**

At page 9, of the Agreed Order the first step described (Section VII. Work to be Performed, A.), is the Interim Action Plan, which is to be submitted in 60 days of the effective date of the Agreed Order. By this, given that the Agreed Order is a legally binding document, it appears that all previous steps, including the RI work plan, the RI work (sample collection/data analysis), will happen (by necessity), prior to 60 days after the effective date of the Agreed Order and with no public review and comment. This is confusing, inconsistent with Ecology’s previous stated intent and needs to be clarified.

### **Ecology Response**

We apologize for the confusion. Please refer to the tables showing the schedule of deliverables in Section VII.K of the Agreed Order. These tables should clarify the process and alleviate your concerns.

### **Comment 33.10**

It is clear that I disagree with the Ecology’s decision to implement the sampling portion of the RI prior to public review and prior to the effective date of the Agreed Order. Irrespective of that disagreement, Ecology needs to clarify in the Fact Sheet and Agreed Order exactly what activities are being allowed prior to the effective date of the order and exactly what activities are post AO.

### **Ecology Response**

Please see response to comment 33.5 on page 38.

### **Comment 33.11**

Likewise in describing the Public Participation Plan (PPP) Ecology should explain the unusual way it is implementing the RI, and specifically how this impacts the PPP, and how Ecology intends to accept, consider and potentially act on, and in what time frame, public comment on the sampling plan portion of the RI.

### **Ecology Response**

This information will be added to the PPP. An updated version will be available online.



### **Comment 33.12**

The Interim Action Plan is described in sub section A., as described above the Remedial Investigation Plan is described in sub section C., which makes little sense and adds to the confusion, as the steps should be laid out in a sequential fashion consistent with the time line milestones. In sub section C., at page10, the Agreed Order appears to confirm that Ecology has no intention of providing the RI Plan to the public, to allow public comment, or to hold a public meeting.

#### **Ecology Response**

Please see the response to comment 33.9 on page 40..

### **Comment 33.13**

In reviewing the entirety of this section, there is no mention of the construction of roads and utilities, the timing of this needs to be clear to the public, especially due to previous public comments by the Port and Ecology relative to sampling and construction time lines, inconsistent with the current Agreed Order.

#### **Ecology Response**

Comment noted.

### **Comment 33.14**

Further in turning to page 12, Section K., Schedule of Deliverables where all time line items should be made clear, confusion remains. While at least the work items appear in the right order in this matrix, there is no information at all when road and utility construction will happen. It appears from the text that Ecology does not intend to have any public process related to data collection (post effective date of the Agreed Order), for at least 5 months from now, after the draft RI report is issued. This needs clarification, as this would severely hamper right of the community to effectively comment on the RI data collection plan in any relevant way.

#### **Ecology Response**

We disagree that the public comment period is hampered. As indicated in the AO, both the draft Interim Action Work Plan and the draft Remedial RI Report will be made available for public comment during a designated public comment period. Based on public comments, Ecology may ask for additional investigation if necessary.

### **Comment 33.15**

Apparently in two months after the effective date of the Agreed Order, Ecology will allow comment on the draft Interim Action Plan, but given that site decisions and outcomes are driven by data collection this Agreed Order appears to grossly underestimate the importance of data collection in determining site outcomes and the need for public involvement prior to site data commitments being made.

Ecology and the Port have taken months to negotiate this Agreed Order, all the while being aware of the proposed construction schedule that seems to be driving the decision to cut corners on the public process. It is unfortunate the first thing to get cut out of the Agreed Order schedule to meet the Port's construction schedule is public participation.

### **Ecology Response**

Please see the response to comment 33.14 on page 41..

### **Comment 33.16**

I am also concerned that Ecology has taken unilateral action as part of an Agreed Order during the public comment period for that same Agreed Order and not even adequately explained exactly what actions of Ecology and the Port will occur without public review or input.

### **Ecology Response**

Please see response to comment 33.5 on page 38.

### **Comment 33.17**

The site background section of the Fact Sheet should be improved. In addition to the current information in that section, a sentence should be added to state that the site has been extensively filled since the late 1800's including with waste materials and dredge spoils (see section IV., C, of the AO). This is consistent with geo-tech work and chemical sampling as well as historical records for the area.

### **Ecology Response**

The fact sheet is intended to give the public (impacted community) a brief overview of the site history and work to be performed. It is not intended to provide a complete history of the site - just what the department feels is the most relevant information. The fact sheet is an introduction to the cleanup work or action. More detailed information is provided in the site file in public records.

### **Comment 33.18**

As per the volume of comments above the chart on opportunities for public involvement needs to be changed to indicate when public involvement is being planned for the Remedial Investigation, as the current Fact Sheet chart makes it appear that such public opportunity is simply being eliminated.

### **Ecology Response**

The current public comment period is for the Remedial Investigation. It is definitely not being eliminated. Ecology has added a second comment period so the public has an opportunity to review and comment on the interim action work plan.

## **Comment 33.19**

The Fact Sheet includes maps on the site, showing pre-determined development and the boundaries of the “site”. It is unclear as to why the northwest boundary is located where it is. The current boundary line runs through the middle of an existing building, which doesn’t make much sense, and also eliminates consideration of an area labeled as “future development”. This doesn’t make much sense unless previous sampling has already determined this area to be free of contamination. The site boundaries should be based on existing knowledge of contamination from sampling and historical records, and site sampling should be sufficient to define the lateral extent of contamination, which should adjust the site boundaries as needed. What were the considerations that lead to the present site boundaries and why is the area identified as future expansion excluded from consideration as part of the site now? This would not be as confusing if Ecology clearly marked the LOTT VCP site boundary on the Fact Sheet maps. Even though this doesn’t address the substantive concerns mentioned in further detail below, it would at least provide some visual rationale for what otherwise looks very odd and random.

### **Ecology Response**

The map shown in the Fact Sheet is for the purpose of generally locating the Site. The map does not show the actual site boundaries because the actual boundaries of the Site have not been defined yet. The boundary shown on the map is labeled “East Bay Redevelopment Project Area” - this is a development boundary, not a Site boundary. The word “Site” was intentionally not used on the boundary line in the figure.

## **Comment 33.20**

### **Agreed Order**

I. Introduction – The AO is not accurate in that it cites requirements of the order related to the RI that are being done outside the Agreed Order, prior to the public comment, responsiveness summary, or the effective date of the order.

### **Ecology Response**

Please see the responses to comments 3.6 on page 13 and comment 33.5 on page 38.

## **Comment 33.21**

IV. Definitions – The AO claims in section A., that the boundary of the site is defined by the extent of contamination. At the same time, Ecology has indicated that the lateral extent of contamination is not defined and that was part of the rationale given for placing this site under this AO, rather than allowing it to continue under the Voluntary Cleanup Program (VCP). This inconsistency needs to be corrected.

### **Ecology Response**

We disagree that a correction is needed. Please see the response to comment 33.2 on page 37. Also, the Agreed Order clearly states that if Ecology determines that adequate evidence exists to support combining the two sites, the LOTT Expansion Site will become part of the East Bay Redevelopment Site.

### **Comment 33.22**

What sampling (under the RI currently being implemented), does Ecology intend to rely on to determine if the LOTT site (VCP), and the site wastes are co-mingled and the LOTT site needs to be added to the site as per the AO in section A, or if other lateral contamination is present beyond the current site boundaries?

### **Ecology Response**

Please see the response to comment 33.2 on page 37.

### **Comment 33.23**

V. Findings of Fact – In sections A-S Ecology provides detailed information on hand about historical operations, including some very limited information on dredge and fill, previous shortcomings in the work done by the Port resulting in the decision to put the site under the present AO and require the additional interim work the AO describes. This section makes it clear why it is important for the community to have access to, be able to review, and comment on the RI, as the RI is supposed to fix the defects noted by Ecology above. The failure to have the RI included as part of the AO time line, that is that the RI would commence after the completion and effective date or authorization of the AO, and be a vital element of the comment process, makes it very difficult for the public to comment on the adequacy of the Agreed Order. The RI work plan is vital information that rather than being presented, as it should during the AO public process, is going to be a tag on afterthought after the public comment on the AO is closed. This is a critical flaw in the AO process that hinders adequate and meaningful opportunity for public comment during the AO public comment period.

### **Ecology Response**

As indicated in the AO, both the draft Interim Action Work Plan and the draft RI Report will be made available for public comment during a designated public comment period. Based on public comments, Ecology may ask for additional investigation if necessary.

### **Comment 33.24**

VI. Ecology Determinations – The AO at section E., claims that the Port's construction plans are in essence what makes the AO necessary and how it meets the requirements for interim actions under MTCA. There needs to be strict limits on how much of a driver construction plans and schedules are for MTCA site time lines including meeting requirements and public participation. All parties involved in this matter have known for decades that areas of the peninsula are contaminated, and the use of industrial dredge and fill materials across the entire area is wide spread. This knowledge should have allowed the Port, City of Olympia, LOTT and Ecology to implement actions required under MTCA in an orderly process that provided adequate time lines for all MTCA requirements including the implementation of this AO, inclusion of the RI as a necessary element in the AO up front, and adequate public participation including RI review and comment prior to Ecology approval. Instead the Port and partners are using a contrived construction crisis or emergency to limit public participation. Ecology should not have given in to this pressure, or similar pressure in the future.

### **Ecology Response**

Comments noted. Please also see response to comment 33.23 on this page.

### **Comment 33.25**

VII. Work to be Performed – The layout of this section is not logical or sequentially based. It appears as if the RI will happen after the Interim Action Work Plan, though this is not true. It states the RI work plan is to be submitted within 30 days of the effective date of the AO, even though the cited work plan is already submitted and work on it will be underway prior to the effective date of the AO. Ecology should develop a mile stone graph that includes all elements of the work to occur as part of this order, including the RI, which is partially under and not under this order. This section of the AO should then be re-written to comport with the actual time lines consistent with the milestone graph. The graph could be added to the Fact Sheet. This would solve a bunch of current confusion and assure that all elements of discussion of work to be done and related time lines are consistent and easily understood by the public. This revision should specifically include accurate detail as to the draft RI work plan and the after the fact review Ecology proposes as a make do measure for public participation.

### **Ecology Response**

Comment noted. Please see the response to comment 33.9 on page 40.

### **Comment 33.26**

Section I., is unclear and lacks detail. Specifically, the reason given for truncating public participation so far has been the Port's emergency construction schedule. This "emergency" condition does not end at the completion of, and is not completely addressed by the AO. Rather, this pressure will continue to exist through the actually planned construction at the site. As such the AO, and this section of it sets up the public for further corner cutting in the future, an outcome which is completely unacceptable. Steps need to be taken now to assure that doesn't happen and the AO should clearly indicate to the Port that no further short cuts would be allowed by Ecology.

### **Ecology Response**

We are not sure what section of the order you are referring to. We disagree that public participation has been truncated. Please see the response to comment 33.11 on page 40.

### **Comment 33.27**

Section K., I was afforded the opportunity to briefly look at the draft RI work plan and Ecologies comments to the Port, which just predated my review. When will the final RI be available?

### **Ecology Response**

Ecology's final comments on the draft RI work plan were given to the Port of Olympia (Port) in a letter dated January 12, 2009. The Port has 30 days from the date of the letter to make the final corrections to the draft work plan. The draft RI work plan will be available during the upcoming public comment period for the draft Interim Action work plan. The dates for this public comment period have not been set yet because we are currently reviewing the draft Interim Action work plan

### **Comment 33.28**

Will the Port be starting any RI related work prior to Ecology's review and approval of the final, rather than draft RI work plan?

### **Ecology Response**

Ecology has approved the collection of some specific samples prior to the approval of the RI. These samples are all located within the proposed infrastructure construction and interim action area. The results of this sampling event will be discussed in the interim action work plan and are critical in the development of this work plan.

### **Comment 33.29**

VIII. Terms and Conditions of Order – Under section A., related to public notice, it is improper for Ecology to allow work on the RI that should (and to an extent is) be included in the AO, prior to the public comment period being complete, a responsiveness summary being issued, Ecology determining that the AO is complete, meets the requirements of law, is in the public interest, and signing and making effective the subject AO.

### **Ecology Response**

You have a misunderstanding about this section. The text states that at a minimum, concurrent public notice is provided. Also, the text clearly states that Ecology “reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect”.

### **Comment 33.30**

Section P, deals with compliance with laws. The federal Clean Water Act requires that the Port have an NPDES permit for the site (facility as defined by the AO) to cover any process, or stormwater discharges. This section, including the provisions in sub-section 3., is not consistent with the requirements of federal law. Ecology does not have the authority to waive any requirement of federal law related to NPDES permits, including but not limited to “procedural” requirements. This is not a matter of making a determination of whether such action would result in “loss of approval from a federal agency,” but rather that the agency lacks such authority under any circumstance related to the exercise of MTCA authority. This section of the AO must be rewritten so as to be clear that all requirements of federal law related to permits must be met by the Port, and to further eliminate any impression that Ecology can waive any requirements of federal law.

### **Ecology Response**

Comment noted. In July 2008, we informed the Port of Ecology's determination that the MTCA exemption to NPDES permitting for discharges to navigable waters at or from sites being cleaned up pursuant to MTCA will no longer be allowed.

### **Comment 33.31**

Exhibit A – See comments above in the final paragraph on the Fact Sheet section of the comments. Also see comments under Section IV. Definitions above.

### **Ecology Response**

Please see the response to comment 33.19 on page 43.

### **Comment 33.32**

Exhibit B – The northwest boundary line of the site appears inconsistent with the historical information presented in the exhibit. Which shows both an industrial saw mill, and more importantly a “refuse fire area”, immediately outside the northwestern extent of the site boundary. Existing data has confirmed the presence of combustion related chemicals or wastes at levels that exceed MTCA standards on the property. The failure to include these areas, which appear to be in the “future expansion area” (LOTT VCP site), does not make any sense from a technical perspective.

### **Ecology Response**

Please see the responses to comments 33.19 and 33.21 on page 43.

### **Comment 33.33**

Exhibit C – The same comments as for Exhibit B apply. Maybe it is a matter of scale, but the fire refuse area, AOC 01, defined area seems to be touching the northwest corner of AOC 01. In fact it is clear from the site boundary configuration that the boundary, which is a straight line to that point veers significantly to the east apparently just to avoid running through the middle of AOC 01. It also appears that part of AOC 01 is outside the boundary of both the VCP site and the AO site.

### **Ecology Response**

Please see the responses to comments 33.19 and 33.21 on page 43.

### **Comment 33.34**

Exhibit D – Why is the northern border of the VCP site shorter than and inconsistent with the border of the Phase I area defined in this exhibit? This is particularly confusing as potential problems were noted in the Phase I site map, and an Area of Concern is noted just north of both the LOTT VCP, and AO site boundaries. Did existing data from the Phase II or subsequent work determine this area to not be affected by contamination? If so why did Ecology determine that work was adequate, and much of the rest of the work was not?

## **Ecology Response**

Comment noted. Please see responses to comments 33.19 and 33.21 on page 43.

### **Comment 33.35**

Exhibit E – The exhibit should explain in sufficient detail why certain actions in the RI were necessary to carry out, outside the Agreed Order, and without public participation, and what steps are being taken to account for that in the Public Participation Plan. It is not appropriate for the PPP to be silent, and not adequately explain how Ecology is dealing with this including its stated attempt to offset or replace the rights truncated by Ecologies alternative process for the RI.

## **Ecology Response**

Please see responses to comments 31.4 on page 30, 33.14 on page 41 and 33.18 on page 42.

### **Comment 33.36**

Exhibit F – The exhibit states, “work performed shall be in accordance within the substantive requirements of any applicable law or regulation.” As to item 1., on the list it covers the NPDES permit program under relevant state and federal law. I believe it is unlawful for Ecology to represent that work performed under the AO need only be in accordance with “the substantive requirements”. Ecology has no authority to waive or alter any requirements of the federal Clean Water Act, or to allow work to be done by others that do not meet all federal requirements as written. I request Ecology provide its rational for taking the position that it need only, or need only require others to meet “substantial requirements” of federal law for MTCA sites, with an Attorney General opinion providing basis for such assertion. If Ecology is unable to provide this, the related language in the AO and this exhibit must be removed so as not to imply (in my opinion illegally) that Ecology has authority to modify, alter, or reduce the requirements of federal law and regulation based on some imagined MTCA authority.

## **Ecology Response**

Comment noted. Please see the response to 33.30 on page 46.

### **Comment #34: Ken Anderson, President / Broker, Coldwell Banker, Evergreen Olympic Realty, Inc.**

Comments were received in an e-mail dated October 6, 2008.

I want to express my support for moving forward with the clean-up of East Bay in Olympia. As someone involved in many aspects of the community, I understand what a treasure that land is and what it will be with the new Hands On Children’s Museum sited there. Thanks to Ecology for running a smooth, thorough but efficient process.



## Ecology Response

Comment noted. Thank you for taking the time to comment! We appreciate your support for the efficient cleanup of the site. We will continue to update you on the cleanup progress.

### Comment #35: Rick Panowicz

Comments were received in an e-mail dated October 6, 2008.

Thanks for the call this AM. As a long time resident and property owner in downtown Olympia I want to voice my support for a quick resolution for the cleanup of the site to be occupied by the Hands On Children's Museum. This will be a great legacy for our community to pass down to the future generation and a jump start to the revitalization of our downtown core.

## Ecology Response

Comments noted. Thank you for taking the time to comment! We will continue to update you on the cleanup progress.

### Comment #36: Harry Branch

Comments from a letter received September 26, 2008.

Dear Mr. Teel:

The Agreed Order for the East **Bay** Cleanup Site outlines a cleanup plan that is more likely to increase the spread and bioavailability of contamination than control it.

The Order fails to adequately address the nature of contamination (is it moving) or its extent (how far has it moved). Also East **Bay** was historically intertidal salt marsh and it could be restored at this time without any loss of use. In both respects what is being planned at the Port of Olympia wouldn't even get to first base in other states.

The Agreed Order mentions the removal of contaminated soils, a good thing it would seem. However, the soils to be excavated will be a matter of which soils are in the pathway of development, not which soils are most contaminated.

Dioxin has migrated the length and breadth of the peninsula, from Cascade Pole to the north to the shipping berths to the west and mouth of Moxlie Creek to the south. In a patchwork layout like this clean soil that's brought in will surely become recontaminated and we'll simply end up with a larger volume of contaminated soil. Moreover, for all we know there will be an increase in the flow of contamination along trenches after they're filled. A brief literature search of "soil contamination preferred pathway" brings up hundreds of sources addressing a range of potential pitfalls. Material tends to migrate along pipes and other structures and through soil that has been disturbed.

The East Bay site is beset with as many as five historic artesian wells that were improperly decommissioned (bulldozed rather than packed to depth with bentonite clay). One of these wells broke the surface a few years ago just east of The Alpine Experience. Another broke the surface not long ago just east of the boat storage yard and currently flows for perhaps a hundred feet on the surface.

The entire area could hardly be less stable. There are springs and wells all over downtown Olympia. One has broken through the sidewalk at Legion and Adams. In an artesian discharge zone like this water **can** disrupt subterranean features forcing material in every direction under pressure. Furthermore, pressure from the changing tide permeates the water table twice a day throughout the Port Peninsula. A river of groundwater visibly flows from the bank at low tide.

The Agreed Order states that there will be an "effort" to develop "a draft Remedial Investigation (Ri) work plan outlining how the nature and extent of contamination will be determined", that is to say a stab at a plan for how to develop a plan. Determining the "nature" should be a simple matter of what contaminants are present and by what mechanism they have migrated. Determining the "extent" should be a simple matter of sampling outward until we find acceptably clean soil.

contamination isn't the only issue. Oceanography is the study of physical, chemical and biological parameters that are interrelated. When you alter physical parameters by armoring and dredging you impact other factors including dissolved oxygen. This is especially true in estuaries, small ones like the one at Moxlie Creek's (site of the East Bay development) and large ones like the Mississippi River's. Dead zones, the result of eutrophication or low levels of dissolved oxygen, are spreading off many of the world's estuaries. East Bay is a perfect example.

One exception to this otherwise global trend is the estuary of the Hudson River. When you exit the Lincoln Tunnel heading into New Jersey you see miles of intact salt marsh teeming with egrets and diving ducks. Species from buffleheads to herring are either stable or on the rebound right in the shadow of Manhattan Island.

What's New York doing so differently? Firstly, there is a spirit of understanding and cooperation between governing agencies including the Port of New York and New Jersey, the New York and New Jersey Harbor Estuary Program (Federal) and the New Jersey Estuary Restoration Program (NJ Dept of Transportation).

New York also passed the Hudson River Estuary Management Act resulting in the Hudson River Estuary Management Program under the New York State Department of Environmental Conservation. The mission of the Hudson River Estuary Management Program is to "protect, preserve and where possible restore" the estuary. Decisions are based **on** "sound science and ecosystem based management". Sanctuaries, "areas of special ecologically significant habitat" and basic physical, chemical and biological parameters are specifically mandated as is the "cleanup and restoration of contaminated sites" with specific mention of soils and groundwater. Language in the mission statement for the Washington Department of Ecology is less specific and more toned down and diluted by continued references to economic benefits.

The State of California is working on restoring over 40,000 acres of tidal wetlands. Within this project there are components including the Don Edwards San Francisco Bay National Wildlife Refuge. Up and down the California coast one can find wetland and estuary restorations **and** enhancements.

New York and California restore salt marsh wherever possible. Developing historic tide flats in a badly degraded water body like East **Bay** wouldn't even be a consideration.

Portland, Maine is a good model for sediment issues because they have problems dating back hundreds of years. I attended a conference in Portland where the necessity of source control was a key component.

When something like lead is found in benthic sediments the extent of the contamination is determined in all directions.

Portland learned from some costly mistakes that you can't reverse the order: assess, cleanup, develop/restore. The Washington Department of Ecology believes that the order can be reversed, that we can develop prior to determining the nature and extent of contamination or its source or what it is the source of. Once this site is developed a real cleanup involving removal or aeration of soil or the introduction of microbes, will become a much more expensive option.

At this very moment backhoes and other machinery are digging holes and installing large black pipe on the East Bay site. A veil of dust inundates the entire neighborhood. Workers are wearing no protective gear. According to the Agreed Order soil is to be removed for the purpose of sampling from locations where pipe will be buried. Even though there may be fits and starts, once soil is disturbed, work has begun.

A large sign with beautiful graphics reads: "Energizing ... East Bay ... and beyond, coming soon to East Bay" and etc. The fact that the Port of Olympia continues to invest money designing and promoting East Bay and the fact that Ecology is allowing construction to proceed while this comment period **is** in place, indicate that the important decisions regarding the site have been made.

It often seems as though rather than recognizing the intrinsic importance of natural systems the Washington Department of Ecology must justify every action in terms of its immediate economic benefit. It would be easy for a person to become cynical. The Agency that we think is assigned with protecting and restoring Puget Sound isn't strongly mandated to do either. Generally speaking Washington State never embarks on restorations; it's always the work of a tribal government, a **city** or an NGO. State employees must perform according to the law even when they know the law is skewed or incomplete.

The problem requires a big political **fix**. We need a Bill to create a Puget Sound Conservation and Cleanup Act and resurrect the Puget Sound Water Quality Authority. Then things like this Agreed Order will be a thing of the past.

In the meantime one can only hope that somewhere, someone can find a way to put a stop to this abomination.

Harry Branch

## **Ecology Response**

Please see below for individual responses to comments.

### **Comment 36.1**

The Agreed Order for the East Bay Cleanup Site outlines a cleanup plan that is more likely to increase the spread and bioavailability of contamination than control it. The Order fails to adequately address the nature of contamination (is it moving) or its extent (how far has it moved).

## **Ecology Response**

Please see response to Comment 3.1 on page 11.

## **Comment 36.2**

Also East Bay was historically intertidal salt marsh and it could be restored at this time without any loss of use. In both respects what is being planned at the Port of Olympia wouldn't even get to first base in other states.

### **Ecology Response**

Comment noted.

## **Comment 36.3**

The Agreed Order mentions the removal of contaminated soils, a good thing it would seem. However, the soils to be excavated will be a matter of which soils are in the pathway of development, not which soils are most contaminated.

### **Ecology Response**

Comment noted.

## **Comment 36.4**

Dioxin has migrated the length and breadth of the peninsula, from Cascade Pole to the north to the shipping berths to the west and mouth of Moxlie Creek to the south. In a patchwork layout like this clean soil that's brought in will surely become recontaminated and we'll simply end up with a larger volume of contaminated soil. Moreover, for all we know there will be an increase in the flow of contamination along trenches after they're filled. A brief literature search of "soil contamination preferred pathway" brings up hundreds of sources addressing a range of potential pitfalls. Material tends to migrate along pipes and other structures and through soil that has been disturbed.

### **Ecology Response**

Comment noted.

## **Comment 36.5**

The East Bay site is beset with as many as five historic artesian wells that were improperly decommissioned (bulldozed rather than packed to depth with bentonite clay). One of these wells broke the surface a few years ago just east of The Alpine Experience. Another broke the surface not long ago just east of the boat storage yard and currently flows for perhaps a hundred feet on the surface.

The entire area could hardly be less stable. There are springs and wells all over downtown Olympia. One has broken through the sidewalk at Legion and Adams. In an artesian discharge zone like this water **can** disrupt subterranean features forcing material in every direction under pressure. Furthermore, pressure from the changing tide permeates the water table twice a day throughout the Port Peninsula. A river of groundwater visibly flows from the bank at low tide.

## Ecology Response

Comment noted. Please see response to comment 3.4 on page 12.

### Comment 36.6

The Agreed Order states that there will be an "effort" to develop "a draft Remedial Investigation (RI) work plan outlining how the nature and extent of contamination will be determined", that is to say a stab at a plan for how to develop a plan. Determining the "nature" should be a simple matter of what contaminants are present and by what mechanism they have migrated. Determining the "extent" should be a simple matter of sampling outward until we find acceptably clean soil.

Contamination isn't the only issue. Oceanography is the study of physical, chemical and biological parameters that are interrelated. When you alter physical parameters by armoring and dredging you impact other factors including dissolved oxygen. This is especially true in estuaries, small ones like the one at Moxlie Creek's (site of the East Bay development) and large ones like the Mississippi River's. Dead zones, the result of eutrophication or low levels of dissolved oxygen, are spreading off many of the world's estuaries. East Bay is a perfect example.

One exception to this otherwise global trend is the estuary of the Hudson River. When you exit the Lincoln Tunnel heading into New Jersey you see miles of intact salt marsh teeming with egrets and diving ducks. Species from buffleheads to herring are either stable or on the rebound right in the shadow of Manhattan Island.

What's New York doing so differently? Firstly, there is a spirit of understanding and cooperation between governing agencies including the Port of New York and New Jersey, the New York and New Jersey Harbor Estuary Program (Federal) and the New Jersey Estuary Restoration Program (NJ Dept of Transportation).

New York also passed the Hudson River Estuary Management Act resulting in the Hudson River Estuary Management Program under the New York State Department of Environmental Conservation. The mission of the Hudson River Estuary Management Program is to "protect, preserve and where possible restore" the estuary. Decisions are based on "sound science and ecosystem based management". Sanctuaries, "areas of special ecologically significant habitat" and basic physical, chemical and biological parameters are specifically mandated as is the "cleanup and restoration of contaminated sites" with specific mention of soils and groundwater. Language in the mission statement for the Washington Department of Ecology is less specific and more toned down and diluted by continued references to economic benefits.

The State of California is working on restoring over 40,000 acres of tidal wetlands. Within this project there are components including the Don Edwards San Francisco Bay National Wildlife Refuge. Up and down the California coast one can find wetland and estuary restorations *and* enhancements.

New York and California restore salt marsh wherever possible. Developing historic tide flats in a badly degraded water body like East Bay wouldn't even be a consideration.

Portland, Maine is a good model for sediment issues because they have problems dating back hundreds of years. I attended a conference in Portland where the necessity of source control was a key component. When something like lead is found in benthic sediments the extent of the contamination is determined in all directions.

Portland learned from some costly mistakes that you can't reverse the order: assess, cleanup, develop/restore. The Washington Department: of Ecology believes that the order can be reversed, that we can develop prior to determining the nature and extent of contamination or its source or what it is the source of. Once this site is developed a real cleanup involving removal or aeration of soil or the introduction of microbes, will become a much more expensive option.

## **Ecology Response**

Comment noted.

### **Comment 36.7**

At this very moment backhoes and other machinery are digging holes and installing large black pipe on the East Bay site. A veil of dust inundates the entire neighborhood. Workers are wearing no protective gear. According to the Agreed Order soil is to be removed for the purpose of sampling from locations where pipe will be buried. Even though there may be fits and starts, once soil is disturbed, work has begun.

A large sign with beautiful graphics reads: "Energizing ... East Bay ... and beyond, coming soon to East Bay" and etc. The fact that the Port of Olympia continues to invest money designing and promoting East Bay and the fact that Ecology is allowing construction to proceed while this comment period is in place, indicate that the important decisions regarding the site have been made.

## **Ecology Response**

Comment noted. Please see Response 3.6 on page 13.

### **Comment 36.8**

It often seems as though rather than recognizing the intrinsic importance of natural systems the Washington Department of Ecology must justify every action in terms of its immediate economic benefit. It would be easy for a person to become cynical. The Agency that we think is assigned with protecting and restoring Puget Sound isn't strongly mandated to do either. Generally speaking Washington State never embarks on restorations; it's always the work of a tribal government, a city or an NGO. State employees must perform according to the law even when they know the law is skewed or incomplete.

The problem requires a big political fix. We need a Bill to create a Puget Sound Conservation and Cleanup Act and resurrect the Puget Sound Water Quality Authority. Then things like this Agreed Order will be a thing of the past.

In the meantime one can only hope that somewhere, someone can find a way to put a stop to this abomination.

## **Ecology Response**

Comment noted.