

From: Kevin Cournoyer [mailto:kjc@mac.com]
Sent: Wednesday, July 15, 2009 5:24 PM
To: McInerney, Lucy (ECY)
Subject: Comments - Draft of GP West Agreed Order
Importance: High

Dear Ms. Lucille T. McInerney:

I cordially extend my thanks to the Department of Ecology for giving the public an opportunity to comment on this Agreed Order. I must take issue with the 1-month time period for providing comments. That's simply too short a period of time to comment on a legal document of this significance. Whatcom County residents have waited for years, with no small amount of trepidation, for the cleanup of the southern uplands of the former G-P site. But your giving the comment only a few weeks to assess a document that will establish the legal framework for all that follows. With that fact in mind, my comments will be limited. Regrettably.

1. You're calling this site G-P West. I think this is highly confusing, if not disingenuous, given the fact that the public, through a taxpayer-supported government, the Port of Bellingham, owns this property. I suggest you change the name of the cleanup site to something that reflects public ownership and public liability. Cf. Section VI, Part C of the Agreed Order.

2. Do not, as you did on your remarkably biased work on the Whatcom Waterway Cleanup site, release the Remedial Investigation (RI) along with the Feasibility Study (FS) at the same time. This is a terrible idea, and it simply back loads the entire process and reifies conclusions (e.g., the Port's oft stated commitment to an industrial level of cleanup) that we're recklessly established years ago. Release each report separately, starting, of course, with the RI. And involve the public early---at the RI stage. A recent model for this type of approach to public involvement would be the recent RI for the Squalicum Creek cleanup in Bellingham. Cf. page 7 of the Scope of Work (SOW), which specifically states that Ecology, and only Ecology, will review the RI. This must change. Both the public and other parties (e.g., EPA, review boards, et cetera) should be involved at this stage in the process.

3. On page 3 of the Public Participation Plan (PPP), you state the following: "The G-P West site is ranked a 5 on Ecology's Hazardous Sites List, indicating the lowest risk of human and environmental exposure to hazardous substances." Writing that statement in this PPP is self-evidently deplorable. This statement is a clear indication of your long-recognized bias when it comes to the Port of Bellingham. As one of your Ecology colleagues stated a few months ago, you're sounding like a "Port employee." Indeed. Please reference the September 21, 2004 letter I've attached (file name: **uses_hg_v_mon.pdf**) from Mark Larsen (The Retec Group, Inc.), which was written

during the POB's due diligence period before the purchase of the G-P site. (I want this letter, and all my other attachments, to be a part of the permanent record.)

Specifically, look at page 2. Allow me to quote just two sentences, which is referring to mercury: "Soil concentration in this area average from less than 1 mg/kg to about 300 mg/kg, with a single sample detection of **12,000 mg/kg**. Soil vapor in borehole AS3 was between 720,308 ng/m³ and 877,650 ng/m³ as reported in the RI/FS."

(Emphasis added. As George Dyson has often stated, *no one has what we have.*)

Later in the letter, Mr. Larsen assumes that, in accordance with the EPS (so-called "Environmental Protection Standards"), mercury vapor monitors will need to be used on this site.

4. On page 5 of the PPP, you state seven "key community concerns" that you somehow derived from comments during the Whatcom Waterway Cleanup process, which included thousands and thousands of signatures on the Healthy Bay Initiative. As someone who was fully involved in that horrible process, some of your stated concerns are totally bogus and seem intended to predetermine what's on the mind of the public. For example, in no way whatsoever, was the public, in the aggregate, at all concerned about "understanding the relationship between land use decisions and cleanup decisions." That's clearly your concern. That's clearly Mike Stoner's concern. That's clearly Frank Schmelk's (POB's lawyer) concern. But it is not a community concern, given the fact that the public clearly demands a residential level of cleanup *throughout* the "G-P West" site. But you and the POB are only interested in, as indicated in the original ILA and declarations made in open court, an industrial level of cleanup as defined by MTCA.

5. Please append the Purchase & Sale Agreement between G-P and the POB to this agreed order. Also, append *all insurance documents* that are related to this site and were created by the POB and AIG.

6. Cf. page 2, Section II---"Jurisdiction"---of the Agreed Order. And then cf. page 5 (Section V, Part I) of the Agreed Order. In Section V, Part I there's a reference to "industrial or mixed use purposes." As I've had to impress upon you repeatedly in the past, any and all references to the phrase "mixed use" are invariably deceiving. Why? There is no such thing as a "mixed use" cleanup standard, according to MTCA. The public has demanded a *residential cleanup standard* (cf. the thousands of signatures on the Healthy Bay Initiative, two thorough, statistically compelling polls, the hundreds of signatures on the Cleanup, Not Cover Up petition, et cetera), not an industrial level of cleanup.

7. Cf. Section V, Part L (page 5) of the Agreed Order. In this part, you'll find references to a so-called "interim action" and "remedial action" performed by the Port.

Please provide to the public all records of public notice and participation in these so-called these actions.

8. Also in the same Part L, you find the following: "...during 2006 the Port abandoned several inactive monitoring wells." Why? Was this abandonment approved by Ecology? Why isn't the Port or Ecology using these monitoring wells? Please explain in detail. And please explain honestly, including references to legal documentation, the Purchase & Sale agreement (if necessary), et cetera.

9. Cf. Section VIII, Part B of the Agreed Order. Under no circumstances should \$6,810.62 be given to the Port of Bellingham.

10. In the Agreed Order, Ms. McInerney, you're referred to a "Project Coordinator." In other documents, you're referred to as the "Site Manager." Which is it? If it's the latter, that title should be in the Agreed Order.

11. Page 20 of the Agreed Order has Jim Darling as the POB signatory. Mr. Darling no longer works for the POB.

12. On page 7 of the SOW, it's stated that issuing a responsiveness summary is at Ecology's "discretion." Please change that. A responsiveness summary should be "required."

13. In the Schedule, you mentioned "long-term monitoring." That suggests to me that you've already planned for an industrial level of cleanup before the RI is even written. Deplorable. Once again, your bias ("port employee") is clouding your judgment. You should not be a part of this process any longer. The public demands a residential level of cleanup, as defined by MTCA.

13. I've followed your career very closely. I've studied your work elsewhere on the former G-P mill site. And I've studied the Port's work on this site. And my conclusions are damning. Under no circumstances should the Port be the site lead for this cleanup. And under no circumstances should you be the site manager. You've demonstrated for years an extraordinary bias in all your dealings with the Port. To substantiate these assertions, please include all of the attachments to this e-mail into the public record----they all represent my "comments" about the Agreed Order and your involvement with it.

14. This site should be a Superfund site. Ecology's credibility with respect to overseeing cleanup performed by the Port of Bellingham has been, thanks to your efforts, irreparably damaged.

Sincerely,
Kevin Cournoyer

2514 West Street | Bellingham, WA 98225
(360) 527-1097 | kjc@mac.com



September 21, 2004

(206) 624-9349 Phone
(206) 624-2839 Fax
www.retec.com

Paul Skyllingstad
Department of Ecology
Industrial Section
PO Box 47600
Olympia, Washington 98504-7600

**RE: Range of Potential Future Land Uses
Georgia Pacific Chlor-Alkali Plant, Bellingham**

Dear Paul:

Thank you for meeting with RETEC, the Port and GP last week in Bellevue. We appreciate your willingness to meet with the Port during its due diligence evaluations of the GP properties, including the Chlor-Alkali Plant.

As we discussed at our meeting, the Port's proposed transaction is contingent on a number of factors. If it moves ahead, then the Port would become the owner of the Chlor-Alkali Plant property, and would implement the final cleanup of the site. Eventual site redevelopment would be conducted by the Port, or by a future development partner.

For the Chlor-Alkali plant, there are two main topics on which we would like to get Ecology's preliminary feedback during the due diligence period:

- **Groundwater Cleanup Framework and/or Alternatives:** The current RI/FS prepared for GP proposes actions to address groundwater contamination at the site. The document presents a framework for cleanup levels, points of compliance and monitoring with each of six remedial alternatives. We would like to understand any preliminary opinions Ecology may have with respect to the site compliance framework or the preferred remedial alternative identified in the RI/FS document.
- **Potential Restricted Use Areas:** The Port's long-term land use plans for the site have not been fixed at this time. However, future site reuse could include industrial, commercial, recreational or potentially residential uses. Obviously, reuse of the property would depend on appropriate matching of cleanup actions with land uses. At this time we are interested in obtaining a general reaction from Ecology whether there are portions of the site that might be restricted from certain types of redevelopment, even with appropriate controls.

In our evaluation of the site, we've been discussing the site using three sub-area designations as follows:

- 1) **Chem-Fix Sub-Area:** This portion of the site contains stabilized, buried materials which Ecology has stated could be subject to Dangerous Waste provisions if generated (i.e., excavated). Soil concentrations measured historically by ENSR were up to 5,800 mg/kg in this area, though recent testing as described in the RI/FS produced a composite sample value of 10 mg/kg. Groundwater mercury concentrations in the vicinity (EMW-7S and EMW-20S) were below method detection limits in the 1994 ENSR documents. Mercury vapor concentrations measured in boreholes AS-12 to AS-15 ranged from < 117 ng/m³ to a high of 779 ng/m³.
- 2) **Caustic Groundwater Plume Sub-Area:** The caustic plume is located near the former process area and contains high-pH groundwater with mercury concentrations between 1 ug/L and 94 ug/L (as measured during recent testing described in the 2004 RI/FS). Soil concentrations in this area average from less than 1 mg/kg to about 300 mg/kg, with a single sample detection of 12,000 mg/kg. Soil vapor in borehole AS3 was between 720,308 ng/m³ and 877,650 ng/m³ as reported in the RI/FS.
- 3) **Remaining Site Areas:** The balance of the site contains lower-level soil and/or groundwater concentrations. Soil concentrations range from below 1 mg/kg to a high of 320 mg/kg (assuming removal of the soil in the vicinity of LP-01 and AS-10 as described in the RI/FS). Groundwater mercury concentrations are generally less than 2 ug/L, and are frequently less than 0.2 ug/L. Vapor sampling performed during the RI/FS was limited to a single sample (AS-7) with a measured value of < 158 ng/m³. The mercury soil concentration in location AS-7 was reportedly 4.57 mg/kg.

As a practical matter, we've assumed that most non-industrial site uses would involve placement of a cap over the site to prevent direct contact with soils containing elevated concentrations of mercury and/or other contaminants. Secondly, we've assumed that further vapor evaluations would likely be required prior to placement of enclosed buildings over portions of the site containing significant detectable mercury concentrations – particularly in the chem.-fix and caustic plume areas. Finally, we've assumed that uses that penetrate the cover materials overlying the chemfix area would be discouraged, with additional engineering and/or institutional controls applying to this area, and Dangerous Waste evaluations being triggered for generated soils from this area.

We are interested at this time in any opinions Ecology may have regarding potential use restrictions at the property, assuming that the items in the foregoing paragraph are addressed, and that an appropriate groundwater remedy is implemented. Simply put, are there sub-areas of the site (those described above or others) where Ecology believes that certain uses may effectively be prohibited. The range of potential uses that the Port is evaluating includes some or all of the following:

- **Industrial Reuse:**
 - Open-Air Storage: Container terminal, equipment lay-down area, railyard, parking lots. Paved and/or gravel surfaces.
 - Warehousing: Pile-supported structures for industrial uses such as cargo movement or dry stack boat storage.
 - Enclosed industrial buildings: Offices, equipment shops, manufacturing buildings, etc. associated with industrial businesses. Most buildings would likely require pile-supported foundations.
- **Commercial:**
 - Office buildings and/or retail shops, from one to several stories. Most buildings would be on pile-supported foundations.
 - Parking areas, landscape, etc. associated with commercial buildings
- **Recreational:**
 - Park areas.
- **Mixed-Use:**
 - Typically commercial uses on the ground floor, residential (condominium style) uses on upper floors).
 - Mixed use areas likely intermixed with commercial and/or residential uses on adjacent parcels.
- **Residential:**
 - Multi-family residential uses (i.e., condominium style) of one to many stories.
 - Single-family residential. This use is considered very unlikely, though not strictly out of the question at this time.

At our meeting on the 28th, we can discuss any preliminary opinions Ecology may have. We recognize that Ecology's review of the RI/FS is ongoing, and that final agency comments on the document may not be available until after the due diligence period is closed.

I've attached some of the main summary figures from the 2004 RI/FS for your reference. Thank you for your assistance on this matter.

Sincerely,
THE RETEC GROUP, INC.



Mark Larsen
 Senior Project Manager

cc: Mike Stoner / Port of Bellingham
 Project File

18 December 2006

Kevin Cournoyer
2514 West Street
Bellingham, WA 98225
kjc@mac.com
360.527.1097

Lucille T. McInerney
Department of Ecology
3190 160th Avenue
Bellevue, WA 98008-5452

Dear Ms. McInerney:

I'm grateful to you and the State of Washington for providing oversight of cleanup projects that directly effect the health and safety of current and future generations of citizens. I've observed some of your work in the past and have been generally pleased. But your oversight of the Port of Bellingham's Whatcom Waterway cleanup plan greatly concerns me. I'm concerned that the trust the people of Whatcom County have placed in the State's environmental oversight responsibility may have been severely violated by the October 2006 Whatcom Waterway Remedial Investigation/Feasibility Study (RI/FS) and Environmental Impact Statement (EIS). I remain hopeful that you, in the fullness of time, will act in such a way that the trust of citizens can be regained.

Purpose

Briefly, I'd like to call attention to recent comments made to KGMI Radio by an official from Ecology. This official said that, in essence, the public is not here to pick the "best" cleanup alternative. The implication, I suppose, is that Ecology has already done that, as is stated on 1-1 of the FS. This official further indicated that the public is here to, in essence, check Ecology's homework. Respectfully, I must say that I'm unaware of any regulations that would, in any way, limit the scope of public concerns or how Ecology responds to them. In fact, there are precedents to the contrary. I think it's important to emphasize that there are 8 alternatives in the RI/FS. And 4 of them cap the ASB. If Ecology did not want us to consider any but the two "preferred alternatives," it should not have put the other alternatives in the documents. I hope those other alternatives were not put in there simply to humor us or to make the Port's intentions seem fair-minded or objective. Because they're not—fair-minded or objective.

Criticisms

There are a lot of problems with this RI/FS and EIS. I'd like to organize most of my comments around a few general definitions that appear deliberately mangled in these byzantine documents.

1. Landowner. I met Mike Stoner, the Port's Director of Environmental Programs and SEPA lead for this project, for the first time on January 24th of this year at a LMN presentation of design concepts for New Whatcom. And, not surprisingly, we had an argument. I had been to many meetings about the waterfront. I had been to the charate for New Whatcom. And I had been listening very carefully to public comments. Other than a braying minority (this has been substantiated by polling data [<http://www.bbayf.org/polls/index.html>]), it was clear that the majority of citizens had no interest in a marina in the ASB. I had studied Alternative J or the Modified Preferred Alternative. It was obvious that for the sake of public health and safety, you had to use the ASB to help remediate the inner Waterway in a cost-effective manner. The ASB's right there, after all, right next to the Waterway. It only makes sense. It would be irresponsible to not use it for remediation. So I spoke up at the first LMN presentation about this problem. Why in the hell did not one design concept exclude a marina? As David Bricklin later proved in March (http://www.bbayf.org/images/documents/marina_legal_question.pdf), there is no legal obligation for including a marina in the ASB. What's going on? The public was and is clearly on board with exploring other ideas for that area. Not the Port, though. Clearly.

After I finished speaking, Mr. Stoner turned to me. We had an exchange that went something like this:

MS: The marina is why this all started.

KC: That's irrelevant at this point. The Port doesn't own this property. The public owns the property.

MS: The Port owns the property.

KC: No, the Port *manages* the property. The public *owns* it.

MS: The Port owns it.

KC: The public owns it.

MS: The Port owns it.

You get the idea. Let me quote from the Port of Bellingham's Mission Statement:

"The Port pledges to work cooperatively with other entities — within the framework of community standards — and to be a responsible trustee of our **publicly owned assets**." [Emphasis mine.]

So when we you talk about the "wishes of the landowner," the plain truth of the matter is that we're talking about the wishes of the public. Not the Port. The **public**. The POB is not a private corporation. In two polls, the **public** rated the safe disposal of contaminants highest among a list of concerns about our waterfront redevelopment. The **public** spoke clearly and unequivocally about the cleanup of the Whatcom Waterway by signing the Healthy Bay Initiative. 6400 signatures. 6400 voices. I implore the Department of Ecology to do what neither the City nor the Port has done: listen to them.

2. Aquatic vs. Upland. For years both City officials and Port officials have explicitly and implicitly defined the ASB as aquatic land. It's not. But they've tried mightily to convince the public that it is. Frank Chmelik, the Port's lawyer, has even made this assertion in

legal papers—in the lawsuit against People for a Healthy Bay. He said, basically, that Mark Asmundson wrote a letter and *that* makes the ASB aquatic. This is laughable and possibly perjurous. The argument that Mr. Asmundson has the authority to define the status of the ASB with a letter is about as compelling as his ability to chose a City logo. [Long story.] More troubling, this false assumption—that the ASB is aquatic—is laced throughout the Port’s RI/FS and EIS and stated pretty explicitly on page 6-21 of the FS.

On March 16th of this year, an official with Ecology spoke before the Bellingham City Planning Commission. He said the following:

“Under the Shoreline Act, we consider the ASB filled, even though it’s a lagoon. It’s a wastewater treatment plant, much like a sewage treatment plant. It’s not a water body of the State. It’s uplands.”

[http://www.bbayf.org/public/public_08.html]

The next day, the Port attempted to get this Ecology official in serious trouble— for speaking the truth. Even the Governor, Chris Gregoire, was dragged into this nonsense. If you don’t believe me, ask her. These statements from an Ecology official clearly alarmed the Port of Bellingham.

There has not been anything whatsoever (no permits, no germane revisions to the Shoreline Act or anything else) that has changed the *status* of the ASB. The incontrovertible truth is that it is an upland area. Wishing it otherwise, at this point, will not make it so.

Why has this false definition been so important to the Port and the City? Now that the public has had an opportunity to study the Port’s WW RI/FS and EIS, we know why.

First, it’s important to understand that the chemical SQS for mercury in sediments is 0.41 mg/kg in an aquatic environment. The MCUL is different, but close. (The RI/FS would argue that these cleanup levels do not apply below 12 centimeters [less than 5 inches] or the so-called “bio-active” zone. I think that’s a dangerous approach. I’ll return to that concern later when I discuss dredging depths. Really, you should be thinking about a few feet, not a few inches, and it should be tied to the actual depths of the contaminants themselves.) Here’s the thing: The cleanup levels for mercury in an **upland setting for unrestricted use is 24 mg/kg**. What are the average mercury levels in the ASB, regardless of depth? **6 mg/kg**. That clears MTCA “B” levels easily. The ASB, as far as bioaccumulative toxins like mercury are concerned, can be considered “clean” for an upland area.

What does this mean for this RI/FS? It means that all of the unfavorable comparisons between the inner Waterway and the ASB regarding mercury levels—and there are, mind you, a lot of them—are completely erroneous. Disingenuous at best. Over and over again, the Port tries to convey the impression that the ASB has extremely high levels of mercury. Since the ASB is an upland area, this is flat wrong. It has lots of phenolic compounds, but those compounds break down over time. (The so-called methane problem mentioned in the FS has not been substantiated in any engineering report. [Mr.

Stoner has been indulging in this speculation since at least his May '04 letter to Ecology. If he can't prove it and is unwilling to study it in a RI, he should stop using it. Like so much of the writing in the RI/FS, this is just another vague, unproven, biased speculation to further a narrow objective—a marina in the ASB.) And, again, the mercury levels? Absolutely trivial for an upland setting. Trivial. In this regard, contrary to what we've heard from the Port, the City, *The Bellingham Herald*, and the 2006 WW RI/FS and EIS, the ASB is one of the “cleanest” sites on our waterfront. And if the mercury in the inner waterway (an aquatic environment) were placed in the ASB (an upland environment), the mercury levels would continue to be regarded as low in the ASB. All the sediments, for example, in the entire Alt. J dredge prism are far below 24 mg/kg. After filling the ASB, you would possibly not even need deed restrictions or restrictive covenants. From page 34 of the 2002 RI/FS for the Whatcom Waterway site:

“Under MTCA, in those situations where hazardous substances remain on-site at concentrations above applicable cleanup levels, institutional controls such as deed restrictions or restrictive covenants may be required to protect the integrity of the remedial action and prevent exposure to contaminants remaining at the site. However, based on data collected during the RI/FS (Anchor and Hart Crowser 2000), sediment concentrations within WW Area Alternative J dredge prism (Figure 12) are below prospective Method B MTCA soil cleanup levels for unrestricted land uses, particularly if water quality is already addressed (see above). For example, the MTCA Method B (unrestricted land use) cleanup level for mercury in soil to protect from potential soil contact exposures is 18 mg/kg (Ecology 2001), while the maximum sediment mercury concentration within the Alternative J dredge prism is 12 mg/kg. Thus, MTCA restrictive covenants (WAC 170-340-440(4)(a)) may not be applicable to the ASB CDF.”

This is serendipitous and extraordinary. You should definitely use the ASB somehow for the benefit of the Waterway. Again, it would be irresponsible not to. Clearly, the Port's RI/FS and EIS for the Whatcom Waterway, from the perspective of human health and safety, focuses on the wrong problems.

3. CDF vs. CND. For years, the ASB has been defined as a CDF—a Confined Disposal Facility. That's what it was in the 2002 Modified Preferred Alternative or Alt. J. In how it's engineered, it's actually similar to other CDFs on the West coast. CDFs rank favorably, according to MTCA, with regard to the disposal of contaminants. CNDs (Confined Near-shore Disposal sites)? Not so much. It's obvious that this definition—this pesky CDF thing, if you will—would cause problems for the Port of Bellingham in any fair ranking of the various alternatives. So, with the willful complicity of the Department of Ecology, they changed the disposal designation of the ASB from a CDF to a CND. The explanation for this change is not, as far I can determine, in the narrative of the RI/FS. (There's not much more than one *passing* reference to it in the EIS [e.g., pp. 4-24–4-25], but it's couched in the usual speculative language of these documents [“...may require...”] and it's not supported with any hard evidence—no referenced documents or reports whatsoever.) If pressed, I'm told that Ecology will unearth a report that speculates that the removal of sludges and the aerating fans (the weirs) and berm construction might dam-

age the bentonite liner and, thus, degrade the disposal ranking of the ASB. Is this report tenable? Maybe. Has it be substantiated empirically? No. It might be right. It might be wrong. (I have not personally seen this report. There's absolutely no direct reference to this report, as far as I can determine, in the RI/FS or EIS.) But it's hardly a compelling case to reclassify the disposal designation of the ASB. If the bentonite were damaged, you can replace it—simply reline the ASB. And there are other possibilities, which would require further investigation. (There are scenarios wherein you do not have to construct a berm, for example.) All of this is spelled out in the Healthy Bay Principles created by Frances Badgett and Greg Glass for the Bellingham Bay Foundation. They provide you with numerous rational scenarios wherein you could use the ASB for the purposes of remediating the Whatcom Waterway; in other words, for remediating a highly vulnerable aquatic environment by using a confined, engineered upland environment, the ASB. No matter how inconvenient this fact might be for the Port, for all intents and purposes, the ASB is still a Confined Disposal Facility (CDF). Whether it remains that way permanently or temporarily will require further investigation and study. Next time I request that the authors of the RI/FS be honest about the ASB. A wide array of real alternatives should be brought before the public—before the real owners of this property—for review and comment.

4. Dredging Depth. All the alternatives that dredge the inner waterway do so for the purposes of achieving federal depth and most of them, therefore (according to the Port and Retec), would destabilize the shorelines. And this destabilization would necessitate costly infrastructure to reinforce the shorelines.

Curious. I don't recall this concern expressed so bluntly in the 2002 FS. (The "industrial" versus "mixed-use" or "land-use" arguments are simply not compelling because of the lack of evidence and mitigating options that have not been explored.) Is there merit to it? Maybe. It would appear that experts disagree on this point. But here's the real problem: Dredging for federal channel depth, and not dredging *solely* for the purpose of removing contaminants. Mr. Stoner and Retec just immediately assume that if you dredge the inner waterway, it must be to federal depth and that depth will need to be "maintained." These assumptions are simply preposterous and do nothing more than deceive the public and further the Port's endgame of getting a mega-yacht marina at the expense of public health and safety. If you can't get federal money to dredge just contamination, use MTCA money. Put money where it's needed. When Ecology officials were asked at the Public Hearing on 12/11/06 why the WW RI/FS consistently refers to dredging the inner Waterway to federal depth, these officials were clearly stumped. After Murphy Evans was asked to "repeat the question," you could still not answer the question. At this point, Pete Adolphson said, "you have to." This is, again, simply absurd on its face. The simple fact is that there are no engineering reports to substantiate that blanket statement. All evidence available in these documents makes clear that the Port has not really studied this question. It's inappropriate for an Ecology official to make such a dogmatic assertion at a public hearing.

As thousands upon thousands of citizens have made clear by signing the Healthy Bay Initiative, they want the Whatcom Waterway dredged for the purposes of removing mer-

cury and other contaminants to the maximum extent practical. (And, no, that does not include the Log Pond.

(Cf. http://www.bbayf.org/images/documents/response_to_motion.pdf.) Since it appeared to not interest the Port very much, the Port did not study this issue very carefully. If there are hitherto unheard of detailed engineering reports to the contrary, I'll happily stand corrected. But the readily available evidence suggests that both the Port and Mr. Adolphson are "winging it" on this point. And this is particularly alarming, given the expressions of certitude (e.g., p. 6-16 of the FS) in the RI/FS.

You need very detailed bathymetric maps and other detailed data of the inner Waterway for the purpose of carefully determining the precise depth of the contaminated sediments, the varying levels of contaminations, and how far those contaminated sediments are above federal depth. (Unlike what one Retec representative has suggested in two presentations to the public, the very precise locations, depths, and levels of contamination in the inner Waterway are actually not *that* well understood.) Also, some of the comparatively "clean" outer channel dredged materials might be usable for capping after hydraulically dredging the inner waterway.

The public doesn't care about dredging to federal depth in the inner Waterway. The public wants you to dredge only so far as is necessary to get out the mercury and other contaminants to the maximum extent practical. There are many ways to dredge the inner Waterway that were simply not studied because, it would appear, they would rank too highly in any fair comparison of alternatives vis-à-vis Alt. 5 and Alt. 6.

5. Consideration of Public Concerns & Pilot Rankings. The documents refer to public concerns in ways that are disingenuous and often very speculative (e.g., p. 7-44 of the FS). And they're often flat wrong. In references to the 2002 WW FS, the Port states that public feedback was "significant" (it was not) and deliberately conveys the impression that it was largely unfavorable (it was not). There were compelling reasons stated for using the ASB as a CDF in the feedback for this FS.

As for "Alternative K" (aka Alt. 5 and Alt. 6), the public has never been given an opportunity until now (ex post facto) to express "concerns" about this remediation plan, despite what Mike Stoner tried to convey in a declaration against People for a Healthy Bay ("...months of public discussion and comment in 2004..."). As Elisabeth Britt stated in her declaration:

"Contrary to an implication in the declaration of Mike Stoner, at 6, while there may have been 'robust public participation' and 'over 100 public meetings' regarding the general topic of contaminated site cleanup, virtually none of that public involvement had anything to do with the new Alternative K... Alternative K was developed by the Port with no public process and I am not aware of nor can I find any record of any environmental or public review of Alternative K."

Furthermore, some Alternatives in the RI/FS are new as of 2006. There's a lot of arrant speculation about what the Port thinks the public will say about these alternatives. To suggest that these speculations reveal bias would belabor the obvious.

6. The Marina & the ASB. There's a prima facie agenda driving these documents: The Port's unwavering desire to build a marina in the ASB. It's now clear that the Port is even willing to sacrifice long-term public health and safety issues in order to get its marina. This is self-evidently deplorable. One land-use desire should not trump the "better" in "faster, better, cheaper," to use the old Demo Pilot evaluative criterion. (Well, given the fact that the preferred alternatives to do not use the ASB to help remediate the Waterway, they pretty much miss on all three points—faster, better, cheaper.) In my view, you have to use the ASB to help remediate the the inner Waterway in a cost-effective manner. You have to, from a strict cost-benefit analysis. The Foundation's Healthy Bay Principles give you numerous ways to use the ASB for the purposes of remediating the Waterway. There are no legal or nonlegal documents that require the use of the ASB as a marina. (Again, see Bricklin's letter at http://www.bbayf.org/images/documents/marina_legal_question.pdf). The RI/FS often references the Supplemental to the ILA that was approved by the City Council on 7/24/06. There are problems with that Agreement with respect to building a marina in the ASB. For one, it does not actually mention the ASB at all. It talks about a marina, but it does not state where it will be built. It talks about between 300–450 "slips," but it doesn't indicate whether those are in the "water" or on "land," as in dry-stacking. There have been no permits to change the status of the ASB from upland to aquatic. There have been no permits that would specifically allow for a marina in the ASB. And there are other problems.

The "marina question" remains an open one. The implicit focus of any RI/FS for the Whatcom Waterway site should never be the construction of a marina. The focus—the explicit focus, if you will—should be on the best cleanup scenario for the least amount of money possible, in accordance to MTCA's evaluative framework. And if that means using the ASB to remediate the inner Waterway, so be it.

As for "capturing new funding sources" (p. 8-12 of the FS), there are many other unexplored possibilities—other than a marina, that is—for the ASB in terms of "funding sources." (I've already explained that building a marina will actually kill jobs ["funding sources"] at the Tissue Mill.) Since a filled ASB would be "below MTCA direct soil contact for unrestricted land use" (2002 FS), the ASB could be used for just about any purpose, including the possibility of ground-floor residences. Unlike the rest of the NWSDA, a filled ASB is really about the only place one could safely contemplate tall buildings. Imagine buildings, a habitat corridor (as was suggested by the Demo Pilot long ago), wastewater treatment, you name it—all in public ownership. It's simply bogus to suggest that a marina is the only viable land-use option for the ASB. In fact, a marina is one of the least desirable options and the majority of the public doesn't even want it (<http://www.bbayf.org/polls/index.html>).

7. Human Health Assessment. I was appalled by the flippant reference to "over estimation" of tribal fish consumption. The population profile information for consuming fish over time is very lacking. You need to perform a thorough human health assessment for a very wide range of population groups.

8. Land Before Water. As has been demonstrated by the Foss Waterway (<http://www.thenewstribune.com/news/environment/story/5557873p-5002243c.html>) and generally accepted EPA procedures, it's really a bad idea to remediate a contaminated waterway before you remediate contiguous and contaminated upland areas. The G-P Mill site has mercury concentrations as high as 12,500 mg/kg. These are extraordinarily levels of mercury. The caustic groundwater plum, which does not really come up in the 2006 WW RI/FS as far as I can determine, is moving, albeit slowly. One expert has told me that it could possibly hit the Long Pond in approximately 30 years. There are a lot of unknowns regarding the former G-P Mill site. It strains credulity to hear you claim, as you have repeatedly, that the "sources of contamination" have stopped by the mere expressed fact that most of G-P's operations have closed. You will have to study the site thoroughly in a RI before you can really make that claim with any confidence. Also, I remember Mr. Adolphson tell an audience recently that we "don't know" the source or the reason for the rising mercury levels in samples like SS-WP-1. This area is right next to the G-P Mill site. This sort of expressed ignorance about something this important does not engender confidence in the public.

Please switch the sequence of the cleanup projects in the NWSDA. Remediate most of the upland areas before you remediate the Whatcom Waterway site.

9. Item 11. The purchase and sale agreement between the Port of Bellingham and Georgia-Pacific is a pretty alarming document. On page 24, there's something called **Item 11**. It states:

"Georgia-Pacific and the Port shall cooperate and jointly seek the agreement of Ecology to accept and issue for public review and comment Alternative "K" proposed by the Port for the remediation of the Whatcom Waterway Site. Neither Georgia-Pacific nor the Port shall publicly or privately, directly or indirectly, advance, promote or attempt to influence any other remediation plan for the Whatcom Waterway site."

And there you it. At this point, this rigged process of ultimately reifying "Alternative K" (aka Alt. 5 and Alt. 6) appears to be working. The Department of Ecology has so far appeared to be willing to bend to the Port's will, even though they have the authority to do otherwise.

Really, if you look at Item 11 and you think about the fact the Mike Stoner is a Port employee—it boggles the mind that he's the SEPA lead on this project. The people who put him in that position should be ashamed of themselves. At a minimum, this is manifestly unethical. In fairness, what is he do? He's practically compelled to dissemble—to do whatever is necessary—to achieve an outcome that was set in motion years ago. He simply cannot act impartially or objectively in his State-authorized role to approve environmental standards for the Whatcom Waterway site. Therefore, I implore all relevant persons in authority to remove Mike Stoner as SEPA lead and replace him with someone who is neither a Port of Bellingham employee nor a City of Bellingham employee. (All COB employees are also incapable of acting impartially or objectively in a SEPA capacity—or, for that matter, in any other capacity related to the Whatcom Waterway cleanup—because of the so-called "Remediation Interlocal" of 2005.)

Conclusion

The public has been very clear: They want the mercury and other contaminants removed from the Whatcom Waterway to the maximum extent that's technically practical. Such pleas from citizens, though, have thus far been met with either aggressive indifference or morally reprehensible lawsuits intended to shut them up. What I did not expect was the apparent complicity in this rigged process by the Washington State Department of Ecology. I am, frankly, astonished by it. But I remain hopeful. So I'll end with a plea of my own: Please start over. We need another RI/FS and EIS. There are so many ways to do this right that were not considered or investigated because the fix was in years ago. There are so many things, in the narrative of these documents, that are dead wrong. You need to start over. Use the data that's accurate, but start over. Please listen to the thousand of concerned citizens who signed the Healthy Bay Initiative. Honor their hopes that are implicit in their signatures. Listen to Curry Miles, to Barbara Miles, to Spencer Schankel, to Barbara Reisman, to Pat Curvin, to Dick Williams, to Rodd Pemble, to Frances Badgett, and to thousands of other concerned citizens. Please listen.

Sincerely,
Kevin Cournoyer

2514 West Street
Bellingham, WA 98225
kjc@mac.com | 360.527.1097

11 May 2007

Kevin Cournoyer
2514 West Street
Bellingham, WA 98225
kjc@mac.com
360.527.1097

Andy Maron – SEPA Responsible Official
Port of Bellingham
P.O. Box 1677
1801 Roeder Avenue
Bellingham, WA 98227-1677

Dear Mr. Maron:

Thank you for this opportunity to comment on the Environmental Impact Statement Draft Scoping Document (EISDSD).

Public Process

I must say that, as a concerned citizen, I feel that the Port of Bellingham (POB) and the City of Bellingham (COB) have rushed this process and “managed” public input in ways that are appalling. My comments will be brief ones out of necessity, even though I have a lot to say to you. I’ve actively studied the redevelopment of our waterfront for years. I’ve read thousands of pages of documents and I’ve attended countless meetings. I’ve been engaged. And I’m willing to comment fully. But you’re just not providing citizens with adequate time to do so, regardless of what’s specified in the regulations. This document (EISDSD) is littered with unsettling implications. And much of it seems deliberately inscrutable.

The EISDSD was issued just a few days before the first public hearing. The public has never been allowed to ask questions, for the record, in front of fellow citizens, in a truly open, fair, and democratic manner. The public was told they’d have 21 days to comment (we really need months), but it was not really made clear of when that timeline would begin and end, other than a tossed-off comment that it begins “now,” which was said *before* the EISDSD was even issued. All very confusing. And to add insult to injury, you told Frances Badgett of the Bellingham Bay Foundation that the deadline is 5 P.M. on the 11th, but that you “might” take comments after that time. Are you toying with us? Don’t you think concerned citizens would like to know with certainty whether or not you’ll accept comments via e-mail after 5 p.m., rather than being confused once again with vague and ambivalent comments?

When a citizen asked to ask questions in front of the entire audience on April 18th, she was told “no” by Ms. Arnold, a hired consultant. And then she was told that her opportu-

nity would be the “very formal” public hearings. But at the public hearings, which I attended, you did not invite questions about the EISDSD. At the second public hearing, Barry Wenger, an Ecology official, and Elisabeth Britt, a former G-P worker and former board member of the Bellingham Bay Foundation, had to force questions on you, which you then said had to be limited to “process questions.” The public was given a vague document of tremendous significance to our future without proper public process. Another tightly managed process from the POB and COB that appears intended to simply achieve a pre-determined objective. This all seems like public process as window dressing.

I request that you have a far more extensive public process associated with the EISDSD, as well as any other documents forthcoming (DEIS, FEIS, et cetera) that are, in any way, associated with the New Whatcom Special Development Area (NWSDA). That means you will need to start over. Not only with respect to the content of the EISDSD, but also with respect to how the public is involved with its creation and how it’s explicated.

SEPA Authority

How this document came to be written and “authorized” is, in my view, a fundamental problem with respect to its validity.

The cover page of the EISDSD indicates that Mike Stoner “issued” it in his capacity as “SEPA Official.” I should emphasize at the outset that Mr. Stoner’s involvement in NWSDA activities has been highly compromised, in my view, since the day the Purchase & Sale Agreement (PSA) between the Port of Bellingham (POB) and Georgia-Pacific (G-P) was signed in early 2005. Given the fact that the State-listed Whatcom Waterway cleanup site is a part of the “developable” areas under consideration in the very limited array of alternatives, I’d like to draw your attention to page 12 of the PSA:

“Georgia-Pacific and the Port shall cooperate and jointly seek the agreement of Ecology to accept and issue for public review and comment Alternative “K” proposed by the Port for the remediation of the Whatcom Waterway Site. Neither Georgia-Pacific nor the Port shall publicly or privately, directly or indirectly, advance, promote or attempt to influence any other remediation plan for the Whatcom Waterway site.”

Alternative “K” puts a marina in the ASB (http://www.ahealthybay.org/images/documents/Alt_K_retec.pdf). Mike Stoner is the “SEPA Official” who actually “issued” the EISDSD. This is a State-authorized authority that’s rooted in impartial judgment. While MTCA allows for the lead agency to both own the property under examination and be the “SEPA” lead (this is a real flaw in MTCA, in my view, but so be it for now), there is a prima facie conflict of interest when the SEPA official is “duty-bound” for his own job security to follow agency (the POB in this case) contracts that effectively impair his State-authorized responsibility to officiate impartially.

After spending taxpayer funds to confer with Stoel Rives (a firm that has distinguished itself, mind you, by fighting such things as the Endangered Species Act) and other lawyers (or so it would appear), the POB transferred the SEPA responsibilities to you, Mr. Maron. But not until *after* Mr. Stoner “issued” the Environmental Impact Statement Draft Scoping Document, which is the root of the problem here. The damage, if you will, is done. (This situation even borders on the comical. The POB’s “Determination of Significance [DOS] and Request for Comments on Scope of EIS”, which is signed by Mike Stoner, ends with reference to an “Appeal.” It states: “There is no agency appeal of this determination of significance.” Right. Mr. Stoner is the SEPA official and he works for the Port. The Port is the “agency.” The agency signed the PSA with G-P. And, in signing the DOS, Mr. Stoner decided to not “appeal” *himself*. This is macabre.) With all due respect, Mr. Maron, your presence does not fix this conflict of interest. You’re being paid by the POB and you are defined, by the Port, as a “Port official.” You are not a neutral party. You cannot fulfill your SEPA responsibilities with any more impartiality than Mr. Stoner. This is not your fault. But this is how, I’m sad to say, this process is rigged. As I’ve stated before in my comments on the POB’s Whatcom Waterway RI/FS & Draft EIS (which I’ve included as an appendix of sorts to my comments here), neither the Port nor the City (cf. the so-called “remediation interlocal”) should have any SEPA authority whatsoever with respect to projects inside the NWSDA.

Range of Alternatives

The six alternatives in the document do not even come close to describing, or even hinting at, the wishes of the public that have been expressed over the years. You need a lot more alternatives. Dozens more, in fact. For starters, you need a No-Action Alternative wherein there really is no action. This is essential to a fair comparative analysis for the DEIS. Unprecedented capital projects (e.g., an incredibly expensive marina in the ASB) are defined under the aegis of “no action.” This is manifestly ridiculous. I’ve read numerous CollinsWoerman workshop documents provided to me by the COB (in response to a public disclosure request) that indicate that getting these so-called “baselines” in the Scoping Document’s No-Action Alternative was very important to the Port. But these projects are absolutely not important to the public. The public, for example, has been very, very, very, very clear about the fact it does not want a marina in the ASB (<http://www.bbayf.org/polls/index.html>). But there it is. In each alternative. Shameless. You must create additional alternatives that do not include a marina in the ASB, as well as a no-action alternative that has no action in it. *Actually* give the public a full range of alternatives that respond to public demands, rather than just rhetorically claim to be giving us that.

Cleanup

A residential level of cleanup (MTCA B) must be the basis for all development within the NWSDA. This is critical for the future health and safety of this community, as well as for its future financial well-being. The RI/FS for each State-listed cleanup site within the NWSDA must be fully completed before there’s a “one-size-fits-all” EIS (DEIS, FEIS) like this one. (In fact, there should not be a single “Planned Action” that encompasses this much property.) The public has been unequivocal about cleanup. Over 6400 citi-

zens signed the Healthy Bay Initiative last year in little more than 20 days of signature-gathering. Here's part of the text of that Initiative:

“It is hereby established as the policy of the City of Bellingham that the paramount concern for the Bellingham Bay waterfront is permanent cleanup of mercury and other persistent toxic contaminants. The City shall use all reasonable means available to persuade the Department of Ecology and other stakeholders to approve a cleanup plan that permanently removes the maximum amount of contaminated sediments, including mercury, from the Whatcom Waterway and establishes that the former mill site south of the Whatcom Waterway shall be cleaned to *unrestricted cleanup standards*, unless technically impracticable. The City shall *not* in any way advocate for or support a cleanup plan that leaves behind significant concentrations of mercury or other contaminants in the Whatcom Waterway or that cleans the former Georgia-Pacific mill site south of the Whatcom Waterway only to an industrial standard.” [Emphasis added.]

Frank Chmelik, one of the POB's lawyers, stated, on 9/18/07 in Superior Court of Whatcom County, that the Port of Bellingham will only clean the former G-P site to an “industrial” standard. (Cf. Court transcripts **No. 06-2-01918 7.**) The Executive Director for the POB has stressed this point recently in a meeting with members of the board of the Bellingham Bay Foundation. At this point, it's really no secret: The Port of Bellingham has no intention whatsoever to clean the site above an industrial level as defined by MTCA. This contravenes the wishes of the public, the real owners of this property.

It's critical that all upland areas within the NWSDA be cleaned to a MTCA B residential standard. (As it turns out, one upland area is *already MTCA B residential* with respect to mercury concentrations, and that area is the Aerated Stabilization Basin. No public entity should be pouring tens of millions of limited cleanup dollars into the ASB, which is one of the cleanest areas of the site, to create a marina the public does not want or desire and, in turn, leave behind dangerous levels of mercury and other toxins of concern [TOCs] on the rest of the site. This makes absolutely no sense. And the public will not, in my view, tolerate it.)

Both City and Port officials often refer to “cleaning” the site so it's “suitable” for “mixed-use” development. Such statements are always deceptive. Why? There is no such thing as a “mixed-use” cleanup standard in MTCA. It's either a residential standard (MTCA A or MTCA B) or it's an industrial standard.

The southern uplands are extraordinarily contaminated with high levels of mercury (areas 9, 8, 6, and 4), a bioaccumulative neurotoxin. Area 10 is also highly contaminated with, among other things, buried barrels of hexavalent chromium—one of the most litigated TOCs in the United States. If the Port is not going to clean the site (the whole site) to a MTCA B standard and you consider the MTCA-required buffers, you're not left with much of anything to develop in the NWSDA. If you were to go ahead and develop these areas with businesses and residents, you will then be confronted with a troubling social justice problem. The City and the Port fumbled this process badly for even

contemplating these ludicrous high-density build-out scenarios. Given the limitations of the site and the POB's stated cleanup plans, these scenarios are fantasies.

Areas 3 and 2 are also contaminated, albeit a lot is unknown about these areas. (Perhaps because some of this area is active with plant operations [approximately 250 family-wage jobs at this time, which will all be eliminated if the ASB closes operations for the marina construction in 2008] it's harder to study.) The Central waterfront is also highly contaminated (it was once a landfill and it was also "topped" with sediments from the ASB area), and it's currently being investigated. I'll reserve judgment about these areas until they're better understood by the stakeholders and the community.

The entire site needs to be understood fully, from a cleanup perspective, in order to contemplate developing it. Cleanup should be an integral part of all alternatives. Otherwise, you're wasting everyone's time and money and endangering citizens.

In the end, there needs to be a hitherto unheard of commitment to clean the site (the entire site) to a **MTCA B residential standard at the outset—before buildings or any other development occurs on the site.**

Also, there needs to be an honest analysis, which should be candidly publicized for the community, of the liquefiable soils on the site (what sorts of buildings, if any, can various areas safely accommodate), and of the stormwater and wastewater capabilities of the site. The ASB should be incorporated into alternatives, given its unique capabilities in these regards.

Another Alternative

In addition to the requested additions and changes above, I'd like to formally request several alternatives that include the ASB that's filled and developed with buildings.

1. Fill the ASB. Use various scenarios for doing that.
2. Cut a habitat corridor through the filled ASB, as was suggested by the Demo Pilot years ago.
3. Toward the back of the ASB (near the Central waterfront and away from the shoreline), option out several scenarios that include a cluster of buildings. I would consider medium to tall buildings in some of the scenarios.
4. Both wastewater and stormwater capabilities of a filled ASB need to be explored.

Of all the areas on the site, the ASB is uniquely qualified for development of the sort I've described above. It's one of the cleanest sites within the NWSDA. (Averages 6 ppm of mercury concentration, versus hotspots like 12,000 ppm of mercury within the caustic groundwater plum or the levels within the Chem-Fix area.) Depending on how the ASB is filled, it could easily be the most geologically stable part of our waterfront—ideal for buildings.

The ASB could lead the charge for the development with buildings that include residents and businesses. The revenue from such development could be significant and help with the cleanup and development for the balance of the site. Such an alternative puts priorities where they're needed for the community as a whole for the long-term.

Parks & Density

Delink the reciprocal relationship between park space and density.

Vehicle Bridge

Remove the vehicle bridge across the Whatcom Waterway in most alternatives. Where in the world did that come from?

I'd like to thank you now for carefully analyzing my requests. I look forward to the DEIS.

Sincerely,

Kevin Cournoyer
2514 West Street
Bellingham, WA 98225
(360) 527-1097
kjc@mac.com

13 August 2007

Kevin Cournoyer
2514 West Street
Bellingham, WA 98225
kjc@mac.com
360.527.1097

Lucille T. McInerney
Department of Ecology
3190 160th Avenue
Bellevue, WA 98008-5452

Dear Ms. McInerney:

Once again, I'd like to express my gratitude to the Department of Ecology for its oversight of the Whatcom Waterway Cleanup site. But I have, once again, serious problems with your work on this project. Very serious problems.

With the limited time provided to me, I've just finished evaluating your Responsiveness Summary (RS) and your Draft Cleanup Action Plan (DCAP). (My comments will be unavoidably brief, given the fact that you have not provided adequate time for a detailed response.) I'm genuinely dismayed by the deceptiveness of these documents. The deceptiveness is roughly similar in nature to the deceptiveness that permeates the Port's 2006 RI/FS and EIS for the Whatcom Waterway. Given that I've carefully observed the Port for many years, their RI/FS and EIS for the Whatcom Waterway were not surprising. It's the Port, after all. They're inherently corrupt. That's been well established, and it no longer surprises people. What is surprising—shocking, really—has been your responses to these documents and your responses to public concerns.

Comment Period

The public comments about the Port's Whatcom Waterway RI/FS and EIS were overwhelmingly negative. (In fact, I'd say that the negative feedback to the Port's plans for the Whatcom Waterway is unprecedented in the history of the Department of Ecology.) And you took seven months to respond to them. (Well, to respond to what you were willing to respond to. More on that later.) And you're giving the public the regulatory minimum to respond: 1 month. On July 15th, I sent you the following request:

From: Kevin Cournoyer <kjc@mac.com>
Date: July 15, 2007 1:55:26 PM PDT
To: Department of Ecology McInerney <lpeb461@ecy.wa.gov>
Subject: Request additional time for public comment - Whatcom Waterway

Dear Ms. McInerney:

I request additional time for public comment for the Whatcom Waterway documents you released on Thursday (7/12/07). (<http://www.ecy.wa.gov/programs/tcp/sites/whatcom/ww.htm>) There are extraordinary problems presented in those documents. You have rejected the reasoned pleas from the community, and it took you about seven months to do so. And so the community will need an extraordinary amount of time to respond to these documents. **I asked for an additional four months for the public comment period.**

Thanks,
Kevin Cournoyer

You have not responded to this time-sensitive request for additional time for the public to comment. The deadline for comments is today. It's apparent that you're in a hurry. I'm not. And the evidence indicates that neither is the public. We want the cleanup done right, not quickly. Many members of the public need assistance from experts like Greg Glass and David Bricklin to help with their responses. Many members of the public need to carefully research all of your claims, all of your dissembling. Such efforts take time. But you're simply ignoring this plea for more time. Consequently, my responses to your responses are very short. And I've had to leave out a lot. I have a lot to say to you, but you're not giving me enough time to really say it.

Public Concerns

You break down the preferences of commenters in a way that's dishonest. You don't differentiate among the substantiveness of the commenters, wherein boilerplate form letters (on par with signatures on a petition) from Yacht Club members are not distinguished from expansive and detailed comments (including highly technical and original field research data). This is dishonest. This is deceptive. And your most profound deception? You deliberately did not include, in your "scoring" of public concerns, the over 6,400 signatures from the Healthy Bay Initiative (which effectively rejects your preferred alternative), which were personally delivered to the Department of Ecology, and the roughly 700 petition signatures collected by the Bellingham Bay Foundation (which effectively rejects your preferred alternative). This slight of hand by you is nothing short of unconscionable. You use this deception in so many ways: in your scoring, in your dismissal of the Bellingham Bay Foundation's suggested remedies, and in other ways throughout your responses. Well over 7000 citizens from Whatcom County have made their concerns crystal clear to you. And you have ignored them.

Methodology of Ecology's Responses

Concerned citizens were not given real point-by-point responses. First, you lumped together concerns of your choosing. And then you provided incredibly brief responses to often detailed and expansive concerns in a document that's very difficult to read and reference. (You left off page numbers, by the way.) And you did not respond at all to many, many, many concerns expressed by the public. This is a travesty. Repetitiveness is not a concern to the public. You should have answered every concern from every citizen as expansively and thoughtfully as possible. No detail should have been ignored. (You took seven months, after all.) No detail was unworthy of your careful analysis and consideration. I think it's fair to characterize your responses (and lack of responses) to the public as contemptuous.

ASB

I could not have been more clear that the ASB needs to be used to help remediate the Whatcom Waterway. Many technical comments were broached by me and others that were either ignored or summarily dismissed. And when reasons were given, they were often highly speculative—and, well, highly biased—and not based on a RI or other research. And this fact simply reinforces my original request that Ecology needs to completely start over. Ecology simply cannot state things like

“...the [use of the] ASB area for sediment dewatering was not evaluated as part of the remedial alternatives.” [5.17]

and expect the public to have any confidence whatsoever in your judgment about what’s the best possible and practicable cleanup alternative for the Whatcom Waterway site.

Upland vs. Aquatic

Although you ignored many of my concerns, you took a stab at trying to answer my comments about the designation of the ASB as upland. I should point out that I used a direct quote from the Ecology official in charge of Whatcom County’s shorelines to buttress my argument. And now you have contradicted this man in an odd, multi-pronged attack that strains credulity. What am I to conclude from this? That one of you is not being wholly truthful? Which one of you would that be? Who would be motivated to not be truthful now? You or the Ecology official in charge of shorelines for Whatcom County? You two should talk.

In my view, your response to this “upland” argument, if you will, is highly dubious. (And by the way, your answer is now about the sixth artful interpretation of the applicability of the Shoreline Act from the Port of Bellingham or the City of Bellingham [and now you] in the last 5 years.) So you’re telling me, in essence, that any wastewater treatment facility contiguous to a shoreline will suddenly change from upland to aquatic anytime that facility is turned off? Say, you know, for maintenance. And then the facility goes back to upland when it’s turned back on? This is ridiculous. The fact remains that the ASB is an upland area. This is not a matter of semantics. It’s a matter of law. And this law has a significant affect on how to view the ways to clean up the Whatcom Waterway site. The ASB is not designated now by what the Port dreams it to be in the 2012, but by what it is. The variability of the ASB’s designation that you mention is simply not a tenable argument. Why? Many reasons. For one thing, neither you nor the Port really use this so-called variability of the ASB’s designation in the documents—not in the comparative ranking of the alternatives and not in the less-than-substantive textual assessments of alternatives 2 through 4. As I’ve stated before, all of the unfavorable comparisons between the inner waterway and the ASB are, therefore, completely fraudulent.

For emphasis, I’m going to repeat, once again, the statement from Ecology’s official in charge of shorelines for Whatcom County:

“Under the Shoreline Act, we consider the ASB filled, even though it’s a lagoon. It’s a wastewater treatment plant, much like a sewage treatment plant. It’s not a water body of the State. It’s uplands.” [http://www.bbaf.org/public/public_08.html]

I suggest you have a long conversation with this man. A man, by the way, the Port of Bellingham attempted to get fired for making this statement, for telling the truth.

Clean Ocean Marina

You repeatedly refer to something called a “Clean Ocean Marina.” For the record, there’s no such thing. That phrase is a marketing nonsense created by the Port of Bellingham to persuade the public to accept a marina in the ASB. Nothing more. No such marina has ever been built before. There are no standards established anywhere for such a marina. It’s a fantasy. And a regulatory authority like the Department of Ecology should not unthinkingly repeat that marketing phrase in these documents. It’s unseemly. And such actions reveal, once again, your bias.

“Adequate,” “Sufficient,” and “Appropriate”

Most of your responses to public concerns are highly dismissive and condescending in nature. You often quickly wrap up your responses with something like the “remedy” is “adequate” or “sufficient” or “appropriate.” Adequate for whom? You and the Port of Bellingham. Not the public. It’s just enough of a so-called “cleanup” to reach the true and only objective that means anything to the Port of Bellingham: a marina in the ASB. Given the fact that your selected remedial alternative is not, according to the public, either “adequate,” “sufficient,” or “appropriate,” your responses (or lack of responses) to their concerns are truly galling.

Institutional Controls (Response 5.28)

This is just one of many examples of your deceptiveness. You said I said “institutional controls” would not be necessary in Alt. 3. I, for one, did not even use the phrase “institutional controls.” (I said “deed restrictions” and “restrictive covenants.”) I, for one, did not mention specifically Alternative 3. I mentioned Alternative “J.” Is Alt. J exactly the same as “Alt. 3.” No. And I used the word “possibly.” So you reshaped the comment before you attempted to discredit it. Where else did you do this “maneuver” in your responses? Finally, I was quoting from a FS approved by *you*, Ms. McInerney. So, in a way, you’re now contradicting yourself. I’ll repeat that section from my comments for emphasis:

All the sediments, for example, in the entire Alt. J dredge prism are far below 24 mg/kg. After filling the ASB, you would possibly not even need deed restrictions or restrictive convenants. From page 34 of the 2002 RI/FS for the Whatcom Waterway site:

“Under MTCA, in those situations where hazardous substances remain on-site at concentrations above applicable cleanup levels, institutional controls such as deed restrictions or restrictive covenants may be required to protect the integrity of the remedial action and prevent exposure to contaminants remaining at the site. However, based on data collected during the RI/FS (Anchor and Hart Crowser 2000), sediment concentrations within WW Area Alternative J dredge prism (Figure 12) are below prospective Method B MTCA soil cleanup levels for unrestricted land uses, particularly if water quality is already addressed (see above). For example, the MTCA Method B (unrestricted land use) cleanup level for mercury in soil to protect from potential soil contact exposures is 18 mg/kg (Ecology 2001), while the maximum sediment mercury concentration within the Alternative J dredge prism is 12 mg/kg. Thus, MTCA restrictive covenants (WAC 170-340-440(4)(a)) may not be applicable to the ASB CDF.”

Whatcom County Department of Health

On at least two occasions, you cite a letter from the Whatcom County Department of Health (WCDH) to buttress the Port’s and Ecology’s BSL analysis. There’s just one problem: **The letter is not the work of the Whatcom County Department of Health.** It was written without any authority from anyone (not the Director of WCDH, not the County Executive, no one) by a Port appointee to the WAG (Waterfront Advisory Group) and a member of the Marina Advisory Committee who happens to work at the WCDH. He just grabbed a sheet of WCDH letterhead, wrote the letter and sent it to you entirely on his own at about the precise time he was applying for a job at the Port of Bellingham. I’m talking about Jeff Hegedus.

According to Regina Delahunt, the Director of WCDH, the County has asked you to remove this fraudulent letter from the record and you have flatly refused. (She indicated that you said, “the record stands.”)

You should remove the letter from the record and make clear its fraudulent nature. I have been working for weeks with Whatcom County officials to resolve this matter. At this time, this matter is still ongoing and unresolved—in part because of your recalcitrance. Both Ecology and Whatcom County need to do something about this problem.

CDF vs. CND

There are several arguments I made in my original comments that you either ignored or brushed aside with breathtaking alacrity. I simply don't have time to go through each one of these examples. But I'll repeat one of them here:

CDF vs. CND. For years, the ASB has been defined as a CDF—a Confined Disposal Facility. That's what it was in the 2002 Modified Preferred Alternative or Alt. J. In how it's engineered, it's actually similar to other CDFs on the West coast. CDFs rank favorably, according to MTCA, with regard to the disposal of contaminants. CNDs (Confined Nearshore Disposal sites)? Not so much. It's obvious that this definition—this pesky CDF thing, if you will—would cause problems for the Port of Bellingham in any fair ranking of the various alternatives. So, with the willful complicity of the Department of Ecology, they changed the disposal designation of the ASB from a CDF to a CND. The explanation for this change is not, as far I can determine, in the narrative of the RI/FS. (There's not much more than one *passing* reference to it in the EIS [e.g., pp. 4-24–4-25], but it's couched in the usual speculative language of these documents ["...may require..."] and it's not supported with any hard evidence—no referenced documents or reports whatsoever.) If pressed, I'm told that Ecology will unearth a report that speculates that the removal of sludges and the aerating fans (the weirs) and berm construction might damage the bentonite liner and, thus, degrade the disposal ranking of the ASB. Is this report tenable? Maybe. Has it be substantiated empirically? No. It might be right. It might be wrong. (I have not personally seen this report. There's absolutely no direct reference to this report, as far as I can determine, in the RI/FS or EIS.) But it's hardly a compelling case to reclassify the disposal designation of the ASB. If the bentonite were damaged, you can replace it—simply reline the ASB. And there are other possibilities, which would require further investigation. (There are scenarios wherein you do not have to construct a berm, for example.) All of this is spelled out in the Healthy Bay Principles created by Frances Badgett and Greg Glass for the Bellingham Bay Foundation. They provide you with numerous rational scenarios wherein you could use the ASB for the purposes of remediating the Whatcom Waterway; in other words, for remediating a highly vulnerable aquatic environment by using a confined, engineered upland environment, the ASB. No matter how inconvenient this fact might be for the Port, for all intents and purposes, the ASB is still a Confined Disposal Facility (CDF). Whether it remains that way permanently or temporarily will require further investigation and study. Next time I request that the authors of the RI/FS be honest about the ASB. A wide array of real alternatives should be brought before the public—before the real owners of this property—for review and comment.

Log Pond

It's now clear that something has to be done about the Log Pond. And I'm not talking about more capping. Both the Port and you have lost all credibility after a year of explanations for the Log Pond's cap failure. You always explain away the failure with a high school debater's ploy: trivialize the problem. But that simply won't work. The scope and nature of the mercury concentrations in the Log Pond are simply too extreme.

Removing the mercury from the Log Pond has never been on the table—no such alternative has ever been investigated in a RI. That must change. Your reasons for focusing exclusively on capping the Log Pond are invariably specious. (For example, removal would destroy habitat. That's absurd. Piling a thicker cap on the existing cap will likely destroy habitat. And what's more "permanent" than a thorough removal with capped residuals? Nothing.) And using the ASB to help remediate the Log Pond should be explored in a RI. I'm talking about hydraulic dredging, dewatering, and then final removal to an off-site Title D landfill. This option must be seriously explored. Otherwise, for one thing, you're going to have to budget for creating a very, very frequent monitoring program that lasts...forever. Because we're talking about hundreds of ppm of mercury in the open aquatic environment. Your "safe at depth" comments are now threadbare and ridiculous. Mercury, a bioaccumulative neurotoxin, is forever. What does "forever" look like on a spreadsheet?

Conclusion

You have bent the efficacy of the cleanup of the Whatcom Waterway to the Port's unflinching desire for a marina in the ASB. This is the plain and simple truth. And the public is left to suffer the long-term consequences of this decision by you. Contrary to what you try to convey to the public, you did not have to bend the cleanup to the marina. You have the authority to force the Port of Bellingham into an involuntary cleanup action that's far more protective and permanent. But you chose not to. This callow response to the Port of Bellingham will haunt the reputation of the Department of Ecology forever. And it will be largely your fault. (I knew we were in trouble when Mike Stoner walked into the public hearing last December and winked at you. And you responded with a broad smile. Not what a citizen might expect from a regulatory authority in that situation. Simply put, the public has been gamed.) I'm completely stunned by your actions as an Ecology official. Your actions, to quote MTCA, have been "recalcitrant." Your aggressive indifference to the heart-felt pleas of thousands of Whatcom County residents will never be forgotten.

Sincerely,

Kevin Cournoyer

2514 West Street | Bellingham, WA 98225 | 360.527.1097 | kjc@mac.com