

West Bay Marina

SIC# J1896

SITE 92753273

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Proj Coord Guy Barrett

In the Matter of Remedial Action by:

AGREED ORDER

West Bay Marina Associates

No. DE 5272

TO: West Bay Marina Associates  
Mr. Neil Falkenburg, Manager  
2100 West Bay Drive NW  
Olympia, WA 98502

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## I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and **West Bay Marina Associates** under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires **West Bay Marina Associates** to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. Ecology believes the actions required by this Order are in the public interest.

## II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MICA), RCW 70.105D.050(1).

## III. PARTIES BOUND

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

## IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as **West Bay Marina** and is generally located at **2100 West Bay Drive NW, Olympia, WA**. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to

Ecology, the Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(4).

B. Parties: Refers to the State of Washington, Department of Ecology and **West Bay Marina Associates**.

C. Potentially Liable Person (PLP): Refers to **West Bay Marina Associates**.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

E. MTCA: Refers to Model Toxics Control Act Cleanup Regulation, Chapter 173-340 WAC.

## V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by **West Bay Marina Associates**:

A. On January 13, 1999, West Bay Marina Associates was issued a notice of penalty for owning an underground storage tank system that was not in compliance with 1998 upgrade requirements.

B. During underground storage tank (UST) closure activities in 1999, petroleum hydrocarbons were discovered and reported to Ecology. Ecology recognized receipt of this release report by letter mailed to West Bay Marina in April 1999.

C. The UST release was independently characterized by Stemen Environmental at the tanks, dispenser and associated fuel lines. Three USTs were removed, the fuel lines drained and capped, and the concrete anchoring slab was demolished. A total of 675 tons of petroleum contaminated soil were removed and properly treated offsite. 56 tons of concrete and asphalt were removed for disposal/recycling. The work was documented in a report entitled Tank Removal and Independent Remedial Action Report dated August 1999.

D. Due to significant petroleum impacts to soil and the potential for impacts to ground/surface waters, the site entered the Voluntary Cleanup Program on October 7, 1999. Based upon review of the Tank Removal and Independent Remedial Action Report, Ecology issued a November 29, 1999 opinion letter requiring groundwater monitoring to determine if petroleum hydrocarbons were present above MTCA Method A cleanup levels.

E. As a result of Ecology's opinion letter, Stemen Environmental installed four groundwater monitoring wells and collected groundwater samples on December 16, 1999.

F. On June 12, 2004, Ecology received a report of a sheen (ERTS #541436) on the surface water from a diesel spill at West Bay Marina. The diesel release was unrecoverable.

G. On July 12, 2004, Ecology received a report of a release (ERTS #542054) from a hydraulic trash compactor. Approximately three gallons of hydraulic oil leaked out and migrated to the surface water of the marina. A surface water sheen was boomed off and contained.

H. On April 7, 2006, a Notice of Pending Inactivity Determination Letter was sent to Stemen Environmental providing 30 days to provide a work summary, report, or other documentation demonstrating that cleanup activities had occurred during the previous 12 months. Ecology did not receive a response to this notice and the site was removed from the Voluntary Cleanup Program on May 9, 2006.

I. On May 29, 2006, Ecology received a report of a release (ERTS #555408) concerning a football field size sheen in Budd Inlet near West Bay Marina.

J. The December 27, 1999 groundwater investigation report by Stemen Environmental was not received by Ecology until June 6, 2007.

K. The Thurston County Health Department conducted a Site Hazard Assessment to address the 1999 underground storage tank removal project. On July 16, 2007, the Thurston County Health Department recommended a No Further Action (NFA) for the tank removal project. Ecology's August 23, 2007 Hazardous Sites List Site Register Special Issue confirmed the No Further Action designation for the petroleum hydrocarbon release from the underground storage tank system. Other potential areas of concern were not addressed by this determination.

L. West Bay Marina Associates has owned the property from March 1990 to present (Exhibit B).

## VI. ECOLOGY DETERMINATIONS

A. PLP is an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a preliminary PLP status letter to **West Bay Marina Associates** dated **July 3, 2007**, pursuant to RCW 70.105D.040, -020(16) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that **West Bay Marina Associates** is a PLP under RCW 70.105D.040 and notified **West Bay Marina Associates** of this determination by letter dated August 6, 2007.

D. Pursuant to RCW 70.105D.030(1) and -050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study or design of a cleanup action.

## VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that **West Bay Marina Associates** take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

1. Within sixty (60) days of the effective date of this order, **West Bay Marina Associates** shall submit to Ecology for review and approval a draft remedial investigation /feasibility study (RI/FS) work plan as outlined in WAC 173-340-350 which includes, but is not limited to, a terrestrial ecological evaluation, determining the nature and extent of soil and sediment contamination, evaluating potential groundwater contamination, and providing steps to initiate interim action as provided in WAC 173-340-350. This work plan shall also include a:

- Draft sampling and analysis plan, which includes quality assurance/quality control activities prepared per the requirements of WAC 173-340-820. Proposed analytical procedures shall be in accordance with WAC 173-340-830.
- Draft health and safety plan. All work performed at the site shall be in accordance with the provisions specified in WAC 173-340-810(1). A health and safety plan shall be prepared per WAC 173-340-810(2). Although the health and safety plan must be submitted to Ecology for review and comment, Ecology does not have authority to approve the plan.

Ecology's comments on the draft work plan shall be incorporated into the final work plan, which shall be submitted to Ecology within thirty (30) days of receipt of such comments. The implementation of the final RI work plan shall be in accordance with the schedule approved in the Final RI Work Plan or as modified, in writing, by Ecology.

2. The work plan shall provide a process to determine the nature and extent of contamination and potential contamination of Site soils and groundwater both on-site and off-site. Sediments at West Bay Marina will be sampled and analyzed based on known or potential releases on the uplands and results from the analysis of other media (soil, groundwater) or other sediment studies. The work plan shall include steps to assess seasonal variation in the groundwater, contamination levels and groundwater flow direction. This shall include monthly measurements of water levels and groundwater flow direction. This shall include monthly measurements of water levels in affected aquifers for a minimum of one (1) year. Ecology may review the frequency of water level measurements at its discretion or at the request of **West Bay Marina Associates**. If groundwater contamination is detected the work plan shall focus and schedule the site investigation work such that interim measures can be designed and implemented to stop the migration of contaminated groundwater off-site as soon as possible. The work plan shall provide for other interim action, which can correct problems, which may become substantially worse or cost substantially more if action is delayed. An example of such an interim action would be removal of contaminated soils before they contaminate larger areas, as provided in WAC 173-340-430. The work plan shall include a schedule for all activities and for submittal of a final remedial investigation report.

3. The RI/FS work plan shall describe analytical methods, parameters and detection limits, in addition to all quality assurance/quality control details needed as described in the most recent publication *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846)*.

4. The RI/FS work plan shall provide for implementation of a feasibility study (FS) per the requirements of Chapter 173-340 WAC.

5. Within sixty (60) days of receiving all analytical data, submit to Ecology for review a draft remedial investigation/feasibility study report. Ecology's comments on the draft report shall be incorporated into a Final RI/FS report within thirty (30) days of the comments.

6. Within sixty (60) days after completion and approval of the RI/FS, **West Bay Marina Associates** shall draft a Cleanup Action Plan (CAP) to satisfy the requirements of WAC 173-340-400. The draft CAP will be written in accordance with WAC 173-340-380 and will detail the proposed cleanup action for addressing the contamination present on the Site. The draft CAP will address the requirements for developing a cleanup action in WAC 173-340-350 through 173-340-390, with specific attention to Ecology's expectations for cleanup alternative in WAC 173-340-370. The draft CAP will include a general description of the proposed cleanup action, cleanup standards from the RI/FS and a rationale regarding their selection, a proposed schedule for implementation, a description of any institutional controls proposed, and a summary of federal, state and local laws that are applicable to the proposed cleanup action.

7. Preparation of a Final CAP is not part of this Order. Ecology intends to require the preparation and implementation of a Final Cap in a subsequent Agreed Order or Consent Decree.



### SCHEDULE OF DELIVERABLES

#### Deliverable

#### Schedule

- |  |  |
|--|--|
| • Draft RI/FS Work Plan, including Sampling Plan | • 60 days following the last day of the Agreed Order and Public Participation Plan public comment period |
| • Final RI/FS Work Plan                          | • 30 days after receiving Ecology's written comments on the Draft RI/FS Work Plan                        |
| • Complete RI/FS Field Work                      | • As scheduled in Final RI/FS Work Plan  |
| • Draft RI/FS Report                             | • 60 days after completion of field work and receipt of final analytical results                         |
| • Final RI/FS Report                             | • 30 days after receiving Ecology's written comments on the Draft RI/FS Report                           |
| • Draft CAP                                      | • 30 days after the Final RI/FS Report is issued   |

6. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section (VII), Ecology may complete and issue the final deliverable.

### VIII. TERMS AND CONDITIONS OF ORDER

#### A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and 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.

#### B. Remedial Action Costs

**West Bay Marina Associates** shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this

Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). **West Bay Marina Associates** shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

**C. Implementation of Remedial Action**

If Ecology determines that **West Bay Marina Associates** has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to **West Bay Marina Associates**, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of **West Bay Marina Associates'** failure to comply with its obligations under this Order, **West Bay Marina Associates** shall reimburse Ecology for the costs of doing such work in accordance with Section VIII (Remedial Action Costs), provided that **West Bay Marina Associates** is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, **West Bay Marina Associates** shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

**D. Designated Project Coordinators**

The project coordinator for Ecology is:

**Guy Barrett**  
**PO Box 47775**  
**Olympia, WA 98504**

**407-7115**

The project coordinator for West Bay Marina Associates is:

**Mr. Neil Falkenburg  
2100 West Bay Drive NW  
Olympia, WA 98502  
360-943-2022**

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

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

**E. Performance**

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

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

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

Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

**West Bay Marina Associates** shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

**F. Access**

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that **West Bay Marina Associates** either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing **West Bay Marina Associates'** progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by **West Bay Marina Associates**. **West Bay Marina Associates** shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by **West Bay Marina Associates** where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by **West Bay Marina Associates** unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

**G. Sampling, Data Submittal, and Availability**

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

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

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

#### **H. Public Participation**

A Public Participation Plan is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with **West Bay Marina Associates**.

Ecology shall maintain the responsibility for public participation at the Site. However, **West Bay Marina Associates** shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments.

Likewise, Ecology shall notify **West Bay Marina Associates** prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by **West Bay Marina Associates** that do not receive prior Ecology approval, **West Bay Marina Associates** shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. **Olympia Timberland Library**  
**313 – 8<sup>th</sup> SE**  
**Olympia, WA 98501-9300**
- b. **Ecology's Southwest Regional Office**  
**300 Desmond Drive**  
**Lacey, WA 98504**

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

#### **I. Retention of Records**

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, **West Bay Marina Associates** shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, **West Bay Marina Associates** shall make all records available to Ecology and allow access for review within a reasonable time.

**J. Resolution of Disputes**

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII. (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, **West Bay Marina Associates** has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. **West Bay Marina Associates** may then request regional management review of the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of **West Bay Marina Associates'** request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

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

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

**K. Extension of Schedule**

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

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

- a. Circumstances beyond the reasonable control and despite the due diligence of **West Bay Marina Associates** including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by **West Bay Marina Associates**;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII. (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of **West Bay Marina Associates**.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give **West Bay Marina Associates** written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology.



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

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
- b. Other circumstances deemed exceptional or extraordinary by Ecology; or
- c. Endangerment as described in Section VIII. (Endangerment).

#### **L. Amendment of Order**

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

Except as provided in Section VIII. (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and **West Bay Marina Associates**. **West Bay Marina Associates** shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII. (Resolution of Disputes).

#### **M. Endangerment**

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct **West Bay Marina Associates** to cease such activities for such period

of time as it deems necessary to abate the danger. **West Bay Marina Associates** shall immediately comply with such direction.

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

If Ecology concurs with or orders a work stoppage pursuant to Section VIII. (Endangerment), **West Bay Marina Associates'** obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII. (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

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

#### **N. Reservation of Rights**

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against **West Bay Marina Associates** to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against **West Bay Marina Associates** regarding remedial actions required by this Order, provided **West Bay Marina Associates** complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

**O. Transfer of Interest in Property**

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

Prior to **West Bay Marina Associates'** transfer of any interest in all or any portion of the Site, and during the effective period of this Order, **West Bay Marina Associates** shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, **West Bay Marina Associates** shall notify Ecology of said transfer. Upon transfer of any interest, **West Bay Marina Associates** shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

**P. Compliance with Applicable Laws**

1. All actions carried out by **West Bay Marina Associates** pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits or specific federal, state or local requirements that the agency has determined are applicable and that are known at the time of entry of this Order have been identified in Exhibit C.

2. Pursuant to RCW 70.105D.090(1), **West Bay Marina Associates** is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, **West**

**Bay Marina Associates** shall comply with the substantive requirements of such permits or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Order, have been identified in Exhibit E.

**West Bay Marina Associates** has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or **West Bay Marina Associates** determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or **West Bay Marina Associates** shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, **West Bay Marina Associates** shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by **West Bay Marina Associates** and on how **West Bay Marina Associates** must meet those requirements. Ecology shall inform **West Bay Marina Associates** in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. **West Bay Marina Associates** shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the State to administer any federal law, the exemption shall not apply and **West Bay Marina Associates** shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

**Q. Financial Assurances**

Pursuant to WAC 173-340-440(11), **West Bay Marina Associates** shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

Within sixty (60) days of the effective date of this Order, **West Bay Marina Associates** shall submit to Ecology for review and approval an estimate of the costs that it will incur in carrying out the terms of this Order, including operation and maintenance, and compliance monitoring. Within sixty (60) days after Ecology approves the aforementioned cost estimate, **West Bay Marina Associates** shall provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology.

**West Bay Marina Associates** shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

1. Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Order; or if applicable, the modified anniversary date established in accordance with this Section, or if applicable, ninety (90) days after the close of **West Bay Marina Associates'** fiscal year if the financial test or corporate guarantee is used, and

2. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the cleanup action plan (CAP) that result in increases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the anniversary date established under this Section to become the date of issuance of such revised or modified CAP.

**R. Indemnification**

**West Bay Marina Associates** agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for

death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of **West Bay Marina Associates**, its officers, employees, agents, or contractors in entering into and implementing this Order. However, **West Bay Marina Associates** shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

#### IX. SATISFACTION OF ORDER

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

#### X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. In the event **West Bay Marina Associates** refuses, without sufficient cause, to comply with any term of this Order, **West Bay Marina Associates** will be liable for:

a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

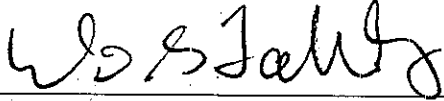
b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: 4/9/08

**West Bay Marina Associates**



**Neil Falkenburg**

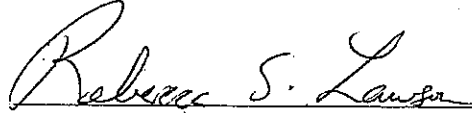
Manager

2100 West Bay Drive NW

Olympia, Washington 98502

Telephone: 360-943-2022

**STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY**



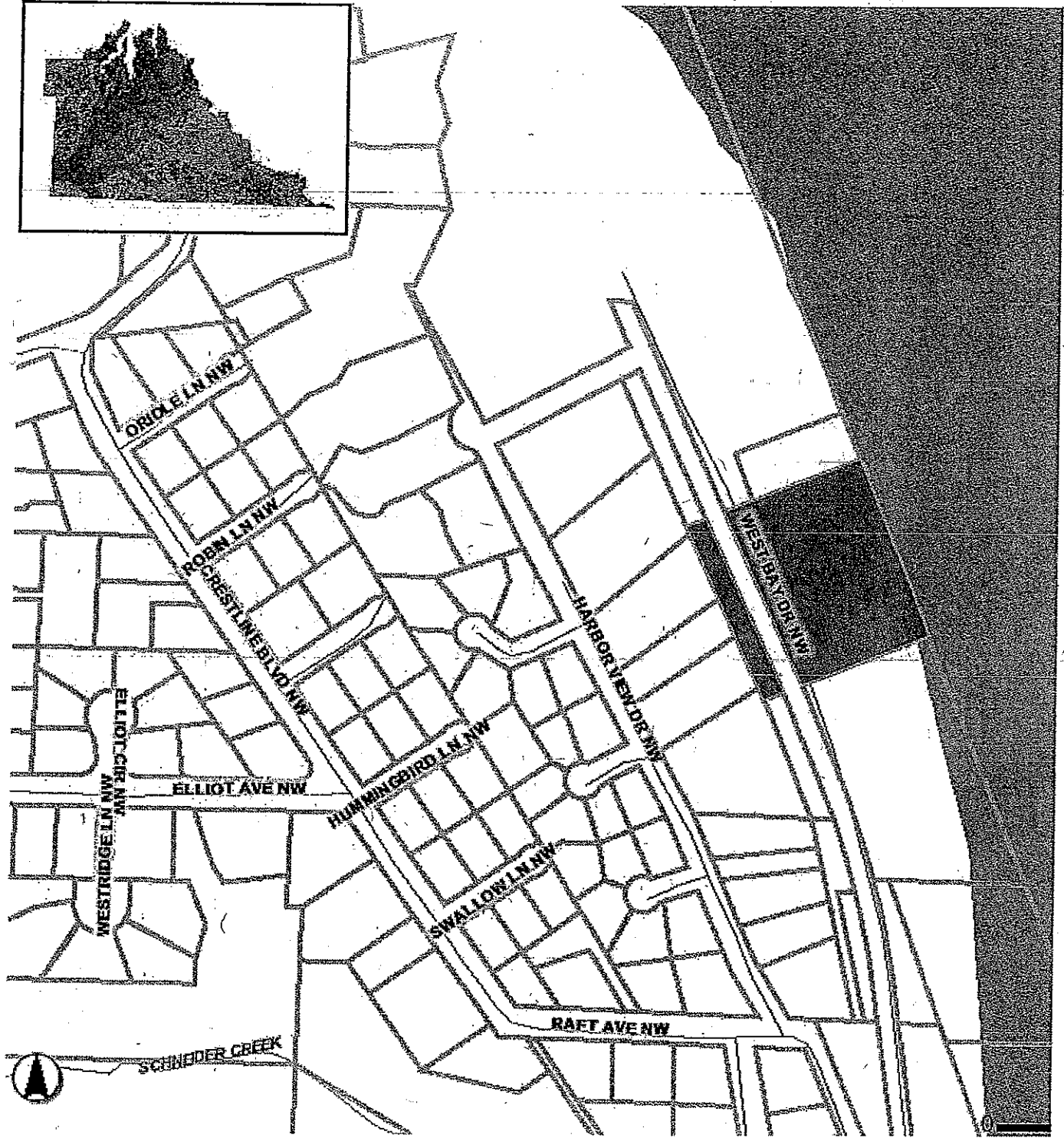
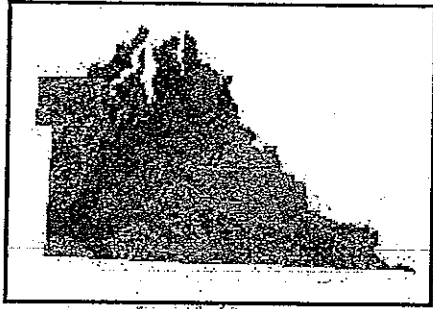
**Rebecca S. Lawson, P.E.**

Section Manager

Toxics Cleanup Program

Southwest Regional Office

Telephone: 360-407-6241





### Thurston County Assessor

Parcel Number: 09750018002

Date: 12/4/2007

Situs Address:	2100 WEST BAY DR NW	Sect/Town/Range:	10 18 2W
Owner:	WEST BAY MARINA ASSOC	Size:	3.01 Acres
Address:	2100 WEST BAY DR NW OLYMPIA, WA 98502	TCA Number:	110
Taxpayer:	WEST BAY MARINA ASSOC	Neighborhood:	64SW
Address:	2100 WEST BAY DR NW OLYMPIA, WA 98502	Property Type:	TRANSPORTATION
Legal Description:	PLUM DLC & FCT ADJ BEING TR A BLA-53352/574 EX PTN DAF: BEG NE COR 8408020110; N22-58-27W 107.95F ALG INNER HBR LN; S66-44-33W 197.08F; S17-24-54E 105.21F; N67-39-05E 207.29F POB	Taxable:	YES
Associations:	99700701200 CH20 INC 99002022795 INDUSTRIAL CONTROLS & SERVICE LLC 99700700900 REV TRUST OF LLOYD & BARBARA SCHNEIDER 99002039579 TUGBOAT ANNIES	Active Exemptions:	None
		School District:	OLYMPIA S.D. #111
		Water Source:	PUBLIC
		Sewer Type:	SEWER

#### Market Values

Tax Year	2008	2007	2006	2005	2004	2003
Assessment Year	2007	2006	2005	2004	2003	2002
Market Value Buildings	\$883,200	\$827,200	\$801,800	\$736,000	\$311,700	\$311,700
Market Value Land	\$884,950	\$811,200	\$737,450	\$906,000	\$494,550	\$494,550
Market Value Total	\$1,768,150	\$1,638,400	\$1,539,250	\$1,642,000	\$806,250	\$806,250

#### Commercial Structures

Building	Year Built	Floor	Square Feet	No. Floors	Total Sq. Ft.	Quality	Condition
RESTAURANT	1995	1	2496	1	2496	AVERAGE	GOOD
		2	4238	1	4238		
		3	1812	1	1812		
					8546		

#### Detached Structures

Code	Year Built	Square Feet	Quality	Condition
PVNG-ASPHALT	1990	12000	LOW-COST	POOR
STORAGE-SHED	2000	224	AVERAGE	AVERAGE

#### Permits

Permit Issue Date:	04/24/2003	11/01/1995	09/01/1994
Permit Number:	03-368	9532110	9433910
Permit Type:	COMMERCIAL-REMODEL	COMMERCIAL-EXEMPT	COMMERCIAL-EXEMPT
Amount:	\$20,000	\$60,000	\$400,000
Jurisdiction:	OLYMPIA	Olympia	Olympia
Builder:	OWNER		
Permit Issue Date:	04/01/1986	04/01/1985	
Permit Number:	24955 O	23901 O	
Permit Type:	COMMERCIAL-REMODEL	COMMERCIAL-DET-STR	
Amount:	\$200,000	\$40,000	
Jurisdiction:	Olympia	Olympia	
Builder:			

Please note: permits issued within the past two weeks or before 1996 may not be included.

## EXHIBIT C

The known permits and rules that are pertinent to this Order and their respective substantive requirements are listed below. A contact and phone number are provided for the state agency or local government that would typically administer each permit or applicable regulation. Ecology will make a final determination regarding which substantive requirements will apply in situations where requirements conflict.

### Permits pertinent to this action:

1. Notice of Intent for Well Installation – Washington State Dept. of Ecology

### Other regulations pertinent to this action:

1. Notice of Intent to Install, Ecology (Contact: Dick Szymarek, 360-407-6648)
  - The property owner, owner's agent, or water well operator shall notify the department of their intent to begin well construction, reconstruction, alteration, or decommissioning procedures at least seventy-two hours before starting work.
2. State of Washington, Hazardous Waste Management, Ecology (Contact: Joe Cason, 360-407-6360)
  - The remedial action shall provide for management or disposal of dangerous wastes or hazardous wastes in a manner in compliance with regulations under Chapter 173-303 WAC. Wastes shall be designated and managed in compliance with the site work plans. Hazardous waste manifests shall be used to track the transfer and disposal of hazardous wastes.
3. State of Washington, Minimum Standards for Construction and Maintenance of Wells, Chapter 173-160 WAC, Ecology (Contact Dick Szymarek, 360-407-6648)
  - The investigation shall use the minimum standards established under this chapter to construct and decommission wells.
4. Washington Industrial Safety and Health Act (WISHA), Chapter 49.17 RCW
  - WISHA requires employers to provide safe and healthful workplaces for all employees. It gives L&I the responsibility to establish and enforce workplace safety and health rules. (Contact 360-533-8200)