

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

<p>In the Matter of Remedial Action by:</p> <p>The City of Gig Harbor</p> <p>Regarding: Eddon Boat Park Ecology Facility Site No. 1301959</p>	<p>AGREED ORDER</p> <p>No. DE 5597</p>
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TO: Steve Misiurak, City Engineer
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Gig Harbor (hereafter referred to as “the City”) 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 the City to perform actions to remediate contaminated sediments and soils at the Eddon Boat Park site in Gig Harbor, Washington, in accordance with the Cleanup Action Plan included as Exhibit B to this order. 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 (MTCA), 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. The City agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the City's responsibility under this Order. The City 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 Eddon Boat Park and is generally located at 3711 and 3805 Harborview Drive, Gig Harbor, Washington. 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(5).

B. Parties: Refers to the State of Washington, Department of Ecology and the City of Gig Harbor, Washington.

C. Potentially Liable Person (PLP): Refers to the City of Gig Harbor, Washington.

D. Agreed Order, Order or AO: 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. CAP: Refers to the Cleanup Action Plan developed for this site and included as Exhibit B to this Agreed Order.

F. cPAH: Refers to carcinogenic polycyclic aromatic hydrocarbons.

G. TPH: Refers to total petroleum hydrocarbons.

H. TBT: Refers to tributyltin.

I. mg/kg: Refers to milligrams per kilogram

J. ug/kg: Refers to micrograms per kilogram

K. ug/l: Refers to micrograms per liter

V. FINDINGS OF FACT

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

A. The Eddon Boat Park property consists of the upland, intertidal, and subtidal portions of Pierce County tax parcels 022105-3074 and 022105-3050. The property comprises approximately three acres, with roughly one third of the land uplands and the remainder consisting of tidal and subtidal lands. The site includes this property and portions of adjacent properties where contamination from the facility is found.

B. The City purchased the property in March, 2005. The funds for purchase of the property were raised through a Land Acquisition and Development General Obligation Bond approved by the voters of the City. The land was purchased with the intention of developing it into a park, including preservation of the historic boatyard facilities.

C. The City entered Ecology's Voluntary Cleanup Program in 2005 to receive technical assistance from Ecology for the site investigation and cleanup planning. Under the Voluntary Cleanup Program, the City submitted to Ecology several Technical Memoranda addressing site investigations and interim remedial actions. In the early part of 2008, Ecology and the City decided to enter into this Agreed Order for completion of the remedial actions at the site. A summary of the Technical Memoranda and the opinions issued by Ecology are included in Exhibit C. The site investigations and remedial actions taken prior to the issuance of this Agreed Order are also described below in paragraphs K through V of this section.

D. The north parcel of the property was operated as a boat building and repair facility beginning in the 1940's and continuing until the City purchased the property in 2004. There is a two-story wood frame boat repair building on the northernmost portion of the property. An older house with a wooden deck is present to the south of the boat repair buildings. A 500 gallon

above-ground heating oil tank was present near the boat shop, and a 500 gallon underground heating oil tank was present next to the residence. These tanks are no longer present.

E. Two boat haul out railways are present. One railway enters a roofed shed attached to the waterward edge of the building. The second railway lies alongside and to the south of the first. Both railways extend into the intertidal marine area to approximately 0 feet mean lower low water tidal level (0' MLLW). The boat haul out rails and carriage assembly are of historic value to the future park. Although these structures are slated to be removed to facilitate the sediment cleanup, the City plans to replace them in the future.

F. A 120 foot long pier extends over the tidelands and is connected to a floating dock with ramp/gangway. The elevation of the subtidal lands below the floating dock are approximately minus 4 to minus 6 feet MLLW. The pier and dock are also of historic value to the future park. Although these structures are slated to be removed to facilitate the sediment cleanup, the City plans to replace them in the future.

G. There were two buildings on the south parcel that were demolished by the City in 2006. The building formerly in the middle of the site was a concrete block structure with a covered carport that was present on the site since the 1950's. At one time this was used as a City maintenance shop. It was most recently was used as a retail antique shop. This building is referred to in the project documents as "Pandora's". The building formerly on the southernmost part of the site is believed to have originally been part of a gravel loading operation and was most recently used as a retail shop, referred to in the project documents as "Wild Birds Unlimited". There were several concrete retaining walls behind this building that are believed to have been associated with the gravel loading operation. There were also remnants of a gravel loading crane assembly adjacent to a bulkhead at the south part of the site.

H. The City demolished the former maintenance shop building and the former gravel operation building, cleared brush, and graded and seeded the southern part of the site in 2006.

I Two old wooden bulkheads remain at the shoreline of the south part of the site.

J. Habitat improvements are integrated into the project plans for the sediment and upland remediation. Specifically, the two wooden bulkheads will be removed, and the land will be graded to gently slope to the harbor. This will increase the upper intertidal acreage, and create a 'pocket' estuary. The new shoreline bank will be covered with habitat-friendly substrate.

K A terrestrial ecological evaluation (TEE) was prepared for the project in March 2008 (Technical Memorandum No. 10). A simplified TEE was appropriate for this site based on the criteria in WAC 173-340-7490 through 7493. The simplified TEE compared site data to the screening levels provided in Table 749-2 of the MTCA. One sample in surface soil exceeded the screening level for copper and one surface sample exceeded the screening level for chromium. Ecology concurred with the conclusions of the simplified TEE report that these individual exceedances do not represent overall site conditions, and that site grading that occurred in preparation for park development has very likely diminished the concentrations at the two individual locations significantly.

L. Between 2005 and 2008, the City submitted several technical memoranda and other documents to Ecology summarizing sampling activities and interim remedial actions that have been taken at the site (refer to Exhibit C). Ecology identified ten areas of concern from its review of the site investigations. These are summarized below and discussed in more detail in the following subsections of this Order. Ecology has determined that the Site has been adequately investigated and that cleanup actions can be selected and implemented.

1. 500 gallon underground heating oil tank near the residence.
2. 500 gallon above ground heating oil tank near the boat shop.
3. Elevated heavy oil petroleum hydrocarbons and elevated lead in surface soils underneath covered carport of former maintenance shop ("Pandora's") building. This area was represented by soil boring "AG-8".
4. Fruit tree and yard area. Ecology expressed concern about potential for arsenic or lead contamination from the potential historic use of arsenical pesticides, or from the areawide contamination resulting from aerial deposition from the former Asarco copper smelter in Tacoma.

5. An area below the former Pandora's building where a discarded oil storage tank had been found during brush clearing, and later test pits unearthed three used oil filters. This area was known as the "**Lower Terrace**" area.
6. Potential for oil contamination from the former gravel operation's crane area adjacent to the south bulkhead.
7. An area on the adjacent property to the north, just outside of the north side door to the boat shed containing elevated carcinogenic polycyclic aromatic hydrocarbons (cPAH). This area was represented by soil boring "**AHA-1**".
8. An area at 8 – 10 feet below ground surface on the central/east part of the site containing elevated cPAH. This area was represented by soil boring "**AG-9**".
9. Site Groundwater.
10. Contaminated sediments throughout the tidelands of the property, with the highest levels of contaminants in the vicinity of the marine railways. Some areas of contaminated uplands soils were also identified in areas that could present a source of contamination to sediments.

M. Underground Heating Oil Tank . A 500 gallon underground heating oil tank (UST) next to the residence was removed in March, 2006. Results were presented to Ecology in a letter of May 3, 2006 and in Technical Memorandum No. 4, June 12, 2006. Samples were obtained from the bottom and sidewalls of the final excavation, after approximately 3 feet of overexcavation in an area where initial samples contained cPAH. Water seeping into the excavation was also sampled. No total petroleum hydrocarbons (TPH) or cPAH were detected above the MTCA Method A groundwater or soil cleanup standards for unrestricted land use. Ecology issued an opinion letter through the Voluntary Cleanup Program on June 29, 2006 stating that the UST removal and cleanup met the substantive requirements of MTCA for characterizing and addressing this release. The UST excavation included soils represented by boring AG-5, which contained elevated cPAH (0.417 mg/kg total toxicity equivalent concentration, compared to the MTCA soil cleanup standard for unrestricted land use of 0.1 mg/kg).

N. Above-Ground Heating Oil Tank. This 500 gallon above ground heating oil storage tank (AST) was located at the southwest corner of the boat repair shop. It was removed some time between 1999 and 2005. In August of 2006, a boring was installed close to the former AST to a

depth of 6.5 feet. Samples were obtained from the boring at 4-5 feet and 5-6 feet below ground surface, and from a post hole excavation directly beneath the former tank at 1 foot depth. Soils were tested for TPH and cPAH. All samples were below the MTCA Method A, soil cleanup standards for unrestricted use. Results of AST samples are found in Technical Memorandum No. 7, October 2006. As the City did not request one, no Opinion Letter was provided on Technical Memorandum No. 7.

O. “AG-8” area: Soil boring results for boring AG-8, presented in the Data Assessment and Conceptual Cleanup Plan (August, 2005), showed that the area underneath the covered carport behind the “Pandora’s” building contained elevated TPH and lead in the surface soils. The concentrations detected were 2,535 mg/kg TPH and 586 mg/kg lead, compared to the MTCA Method A soil cleanup standard for unrestricted land use of 2000 mg/kg TPH and 250 mg/kg lead. The City excavated 2 feet of soil from an approximately 250 square foot area. Samples from the sidewalls and bottom of the excavaton confirmed that the hydrocarbon and lead-containing soils were successfully removed. A summary of this removal action and confirmation sampling data are found in Technical Memorandum No. 4, June, 2006. Ecology issued an opinion letter through the Voluntary Cleanup Program on June 29, 2006 stating that AG-8 area remediation met the substantive requirements of MTCA for characterizing and addressing this release.

P Fruit tree and yard area. Ecology requested sampling in this area to identify arsenic or lead contamination from the potential historic use of arsenical pesticides, or from the areawide contamination resulting from aerial deposition from the former Asarco copper smelter in Tacoma. In consultation with Ecology, the City obtained a 5-point composite sample of the orchard area in March, 2006. The results were all below the MTCA Method A unrestricted soil cleanup standards. A summary of this sampling is found in Technical Memorandum No. 4, June, 2006. Ecology issued an opinion letter through the Voluntary Cleanup Program on June 29, 2006 stating the sampling and results met the substantive requirements of MTCA for characterizing and addressing this area.

Q. Lower terrace area. During brush clearing in spring of 2006, the City discovered a discarded oil storage tank. The tank was pumped out, cleaned, and recycled. Ecology requested the City to dig test pits in this area to determine if other contaminants were visually present. In one test pit, three used oil fileters were discovered. Three additional test pits were excavated and samples obtained for volatile organics, PAH, TPH, and metals. All results were below the MTCA Method A unrestricted soil cleanup standards. A summary of this sampling data is found in Technical Memorandum No. 4, June, 2006. In the Ecology June 29, 2006 opinion letter, Ecology stated that sampling in this area met the substantive requirements of MTCA for characterizing and addressing this potential release area.

R. Crane Area. Ecology requested the city to evaluate the area where the former gravel loading crane was operated, on the terrace above the southernmost bulkhead. After the City cleared the brush from this area, Ecology inspected the area for signs of oil staining or other evidence of contamination that may have resulted from the operation of the crane. After a site walk on March 20, 2006, Ecology informed the city that no further investigation would be required in this area.

S. Area AHA-1. Results of samples taken at boring AHA-1 were presented in the Data Assessment and Conceptual Cleanup Plan report, August 2005. Samples at the 1.5 – 3 foot depth contained a total toxicity equivalent cPAH concentration of 0.384 mg/kg, compared to the MTCA Method A soil cleanup level for unrestricted land use of 0.1 mg/kg. This area is just outside of the north side door to the boat shed. The CAP presents the details for cleanup and confirmational monitoring of this area.

T. Area AG-9. An initial boring in this area, presented in the Data Assessment and conceptual Cleanup Plan (August 2005) found cPAH above the MTCA Method A soil cleanup standard for unrestricted land use at a depth of 8-10 feet at this location (0.378 mg/kg total toxicity equivalent cPAH concentration, compared to the MTCA soil cleanup standard of 0.1 mg/kg). In August of 2006, Anchor Environmental installed a monitoring well at the same location of the AG-9 boring, and also installed two soil borings close to the well (approximately

20 feet to the north and to the south of the well). Logs from all three borings show that there is a layer of “charred wood, black, greasy texture” at 8-10 feet below ground surface. Carcinogenic PAH were detected above the MTCA Method A soil standard for unrestricted land use (0.1 mg/kg) in this layer at all three borings (GP-2, 0.181 mg/kg; GP-3, 0.252 mg/kg; MW-3, 0.109 mg/kg). At boring GP-2, a sample obtained from beneath the layer of charred wood debris, at 13 feet below ground surface, did not exceed the cPAH standard and did not contain evidence of charred wood debris. Results of the August 2006 borings are found in Technical Memorandum No. 7, October, 2006. The CAP presents the selected cleanup action and confirmational testing requirements during construction.

U. Site Groundwater. Three groundwater monitoring wells were installed at the site in August, 2006. The locations of the wells were chosen in consultation with Ecology staff. Locations included MW 1, near the shoreline and also close to the former underground heating oil tank; MW-2, close to and downgradient of the former above ground heating oil tank at the southeast side of the boathouse; and MW-3, located in the central area of the site where a site boring installed in 2005 had contained elevated levels of cPAH in soils at 8 – 10 feet below ground surface. Details about well installation and rationale for well locations are found in Technical Memorandum No. 7, October 2006. Groundwater samples were obtained on 8/4/06, 2/20/07, and 5/24/07. Sample results are summarized in Technical Memorandum No. 8, March 2008. In MW-2, arsenic was present at levels from 5.9 to 6.8 micrograms per liter (dissolved), slightly above the MTCA Method A criteria for arsenic in groundwater of 5 micrograms per liter (which is based on background concentrations of arsenic in groundwater). MW-1, closer to the harbor, contained low levels of detectable arsenic, below the MTCA Method A criteria for groundwater, and also below the Marine Chronic Ambient Water Quality Criteria for protection of marine life of 36 micrograms per liter. In MW-3, where cPAH were identified in soils at the 8-10 foot depth, no cPAH were detected above the Ambient Surface Water Quality Criteria for protection of aquatic life (set forth under Section 304 of the Clean Water Act) or for protection of human health from consumption of organisms (set forth under the National Toxics Rule, 40 CFR 131).

V. Sediments: Initial sediment sampling results were presented in the Data Assessment and Conceptual Cleanup Plan (August, 2005). Additional sediment samples were obtained in October of 2006 and in July of 2007, and are presented in Revised Technical Memorandum No. 2 (February 2007) and in Technical Memorandum No. 9 (August, 2007). The sediment sampling showed that the sediments in the vicinity of the marine haul out rails and the sediments to the south of the pier contained levels of mercury, copper, lead, phthalates, polychlorinated biphenyls (PCB), and PAHs above the State of Washington, Sediment Quality Standards (SQS) and Minimum Cleanup Level (MCUL) criteria. These standards are found in the Sediment Management Standards Regulation (SMS), Chapter 173-204 WAC. Although there is not a promulgated SQS or MCUL value for tributyltin (TBT), the sediment concentrations of this chemical were above the screening criteria of 15 ug/l in sediment porewater, which is used for the Puget Sound Dredged Material Management Program (DMMP),

Sediment sample locations and chemical exceedances are shown on Exhibit A. The primary chemicals of concern within the sediments are TBT, mercury, and PCBs.

Sample results show that the highest levels of contaminants are found within the marine railway area (SMU 1 and part of SMU 2 on Exhibit A). Elevated mercury was detected in all seven samples within the marine railway, with the highest detected level of 3.17 mg/kg, compared to the SQS of 0.41 and the MCUL of 0.59 mg/kg. PCBs were detected in three samples within the marine railway area, ranging from 14.3 mg/kg to 99.4 mg/kg, compared to the SQS of 12 mg/kg and the MCUL of 65 mg/kg. (PCB results are expressed as organic carbon normalized concentrations for comparison to the the SQS). Other chemicals detected at elevated levels in the marine railway area included one sample with lead of 870 mg/kg, compared to the SQS of 450 mg/kg; and one sample containing 516 mg/kg copper, compared to the SQS of 390 mg/kg. A few exceedances of the SQS for the semivolatile organic compounds bis (2-ethylhexyl) phthalate, butylbenzylphthalate, dimethylphthalate, benzoflouranthenes and chrysene were detected in some of the samples within the marine railway, at some of the same sample locations with the higher exceedances for the other chemicals of concern. TBT was also detected in all samples within the marine railway, ranging from 140 micrograms per kilogram (ug/kg) to 3200

ug/kg, measured as the TBT ion in bulk sediment. Results from sediment core samples indicate the elevated contaminants are not found below approximately 1.5 feet deep.

Part of the marine railway area is above the high tide line. Because this area could affect the quality of the intertidal sediments through erosion, it was determined by the City and Ecology for this project that the upper railway area would be managed in conjunction with the sediments. Four soil borings in this area contained elevated levels of metals in the surface soils (highest concentrations: 7300 mg/kg lead, 1.2 mg/kg mercury, 2030 mg/kg copper, 2.1 mg/kg cadmium, 442 mg/kg zinc). One sample from this area contained cPAH in surface soils above the MTCA Method A cleanup level for unrestricted soils. Soils in this area are slated to be removed as a part of the cleanup action described in the CAP. There is an area on the embankment just south of the pier where it appeared that metallic debris and refuse from the boat shop had been deposited. This material was tested and found to contain elevated copper, lead, mercury, and zinc (boring location AG-6). The sediment removal project will include removal of this debris and associated soils that could cause sediment contamination to the harbor through erosion.

In general, sediments south of the pier (SMU 3 on Exhibit A) were significantly less contaminated than the sediments within the marine railway, with only three of ten samples containing mercury at levels between 0.47 mg/kg and 0.53 mg/kg (compared to the SQS of 0.41 mg/kg). Three samples within this area contained TBT (SG-5 with 0.13 ug/l porewater/58 ug/kg bulk sediment; SG-11 with 0.032 ug/l in porewater and 280 ug/kg in bulk sediment, and AS-15 with 270 ug/kg bulk sediment). This area is slated to be capped with 12 to 18 inches of clean sand, overlain by 6 to 12 inches of clean gravel. Within this capping area, a subarea of about 600 square feet will be dredged prior to capping to remove a localized area represented by samples SG-4 and AS-4, where TBT concentrations of 2047 ug/kg in bulk sediment and 0.20 ug/l porewater were detected.

Samples in the vicinity of the floating dock, waterward of the edge of the marine railway and in the deeper water area of the site (SMU 2 on Exhibit A), were contaminated only with TBT, with the highest levels found of 620 ug/kg bulk sediment at SG-2 and 0.19 ug/l in porewater at SG-17. Confirmation sampling at the edge of the dredge area in the vicinity of SG017 is required as

a part of the CAP, to ensure that cleanup standards will be met beyond this location that contained TBT above the cleanup standard. The CAP presents the selected cleanup action and confirmational monitoring requirements for site sediments.

VI. ECOLOGY DETERMINATIONS

A. Because it owns the property where the release occurred, the City of Gig Harbor 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 PLP status letter to the City of Gig Harbor dated April 11, 2008, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. By letter dated April 21, 2008, the City voluntarily waived its rights to notice and comment and accepted Ecology’s determination that the City is a PLP under RCW 70.105D.040.

D. Based on sampling performed and independent remedial actions taken by the City and its consultants, and documented to Ecology in a series of Technical Memoranda and supporting materials, Ecology has determined that the investigations and independent remedial actions taken to address the following listed areas of the site are sufficient to meet the substantive requirements contained in the Model Toxics Control Act and its implementing regulations, Chapter 70.105D RCW and chapter 173-340 WAC.

1. Underground Heating Oil Storage Tank Area
2. Above Ground Heating Oil Storage Area
3. Soils under covered carport area of former "Pandora's" building (AG-8 area)
4. Fruit Tree and Yard Area
5. Lower Terrace Area
6. Former Gravel operation crane area.
7. Site Groundwater

E. Ecology has determined that additional remedial actions described in the CAP are necessary at the site to address remaining contamination on the site uplands and in the site sediments. To address these contaminants, a CAP was prepared and is included in this Order as Exhibit B. The CAP includes cleanup levels and remedial actions planned to address remaining upland contaminants in soils at the "AHA-1" and "AG-9" areas, and to address sediment contamination. Alternatives for sediment remediation were developed and presented to Ecology in Technical Memorandum No. 2, Evaluation of Sediment Cleanup Alternatives, January, 2006; Revised Technical Memorandum No. 2, Sediment Cleanup Study Report And Analysis Of Brownfields Cleanup Alternatives, February, 2007; and in Revised Dredging/Capping Alternative B, March 2007. Ecology has approved of the preferred cleanup alternative presented in the March, 2007 Revised Alternative B.

F. 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.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the City 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:

A. Previous site investigations and remedial actions: Ecology hereby incorporates into this Order the previous remedial actions described in Section V. Reimbursement for specific project tasks under a grant agreement with Ecology is contingent upon the determination by Ecology's Toxic Cleanup Program that the work performed complies with applicable standards and is consistent with the remedial action required under this Order.

B. Implement Cleanup Action Plan. The City shall implement the cleanup actions as selected in the CAP (Exhibit B). The CAP in Exhibit B is an integral and enforceable part of this Order.

Schedule: The CAP construction elements shall be completed by November 10, 2008 unless agreed to in writing prior.

C. Deliverables for Cleanup Activities: The City shall submit the documents shown in Table 1 below for Ecology review and approval, according to the specified schedules. The City will submit final documents to Ecology within 15 calendar days of receiving Ecology's written comments on draft documents.

Table 1 – Submittal Schedule

Submittal	Schedule
1) Water Quality Monitoring, Sediment, and Soils Sampling Plan ¹	Draft – Thirty (30) calendar days prior to beginning any work at the Site. Ecology Written Comments – Fifteen (15) days prior to beginning any work at the Site Final – Prior to beginning any work at the Site
2) Institutional Control Plan ¹	Draft – Forty Five (45) calendar days from the effective date of the AO.
3) Long-Term Monitoring Plan ¹	Draft – Forty Five (45) calendar days from the effective date of the AO.
4) Project Completion Report	Within 60 days of completion of sediment cleanup activities.

¹ Contents of water quality and sediment monitoring plan, institutional control plan, and long-term monitoring plan are specified in the CAP.

D. Contractor Submittals: Project plans and specifications require the contractor to submit various plans to the City within 10 days of notice to proceed. The City will provide the draft and final plans to Ecology within one working day of the City receiving the plans from the contractor. Ecology will review and consult with the City about the contents of these plans to ensure that construction practices are in compliance with MTCA, SMS, and project permits. The submittals include:

- Worker Health and Safety Plan
- Contractor Quality Control Plan
- Contractor Demolition Work Plan
- Contractor Dredging and Excavation Work Plan

- Cap Source Material Testing Results
- Contractor Offshore Material Placement Work Plan
- Contractor Environmental Protection Plan

E. **Data Submittals:** Submit results of all environmental sampling data generated for the investigation and cleanup of this site to Ecology's Environmental Information Management System, in accordance with Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and Subappendix E of the Sediment Sampling and Analysis Plan Appendix, Revised February 2008 ("Sediment Related EIM Data Entry Business Rules").

Schedule: Within 60 days of the completion of the cleanup activities.

F. 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, 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

The City 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, beginning April 1, 2008. These costs do not include Ecology costs billed to and paid by the City under the Voluntary Cleanup Program prior to March 31, 2008. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The City 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 the City has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the City, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of the City's failure to comply with its obligations under this Order, the City shall reimburse Ecology for the costs of doing such work in accordance with Section VIII. B. (Remedial Action Costs), provided that the City 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, the City 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:

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The project coordinators for the City are:

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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 the City, 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.

The City has notified Ecology that Anchor Environmental LLC is the engineer for implementation of the this Order and that Anchor will notify Ecology in writing of the identity of the selected contractor(s) for implementation of the cleanup action defined in the CAP.

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 the City 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 the City's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the City. The City shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the City 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 the City 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, the City 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), Subappendix E of the Sediment Sampling and Analysis Plan Appendix, Revised February 2008 ("Sediment Related EIM Data Entry Business Rules"), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the City shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the City pursuant to implementation of this Order. The City shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the City 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. F. (Access), Ecology shall notify the City 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

The City Received a U.S. Environmental Protection Agency Brownfields grant for the site in 2007, and conducted a public participation process as a part of the requirements under that Grant. A fact sheet was issued and a public meeting was held on May 23, 2007. A Public Participation Plan has been developed for the activities under this Agreed Order by Ecology and is included in this Order as Exhibit D.

Ecology shall maintain the responsibility for public participation at the Site. However, the City 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 the City 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 the City that do not receive prior Ecology approval, the City 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. Peninsula Branch Library,
4424 Point Fosdick Dr. NW
Gig Harbor, WA 98335, (253) 851-3793.
- b. Ecology's Southwest Regional Office
P. O. Box 47775
Olympia, WA 98506

(Street Address, 300 Desmond Drive, Lacey, WA 98503)
(360) 407-6365

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, the City 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, the City 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. B. (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, the City 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.

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

2. The burden shall be on the City 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 the City 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 the City;

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

c. Endangerment as described in Section VIII.M (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 the City.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the City 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.L (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. M. (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. N (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 the City. The City 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. J (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 the City to cease such activities for such period of time as it deems necessary to abate the danger. The City shall immediately comply with such direction.

In the event the City 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, the City may cease such activities. The City 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 the City shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the City's cessation of activities, it may direct the City to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII. M (Endangerment), the City's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII. K(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 the City to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the City regarding remedial actions required by this Order, provided the City 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.

The City reserves all of its rights against all parties that are not signatories to this Order.

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 the City 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 the City's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the City 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, the City shall notify Ecology of said transfer. Upon transfer of any

interest, the City 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 the City 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 City has obtained all federal, state and local permits required to conduct the cleanup action.

2. Pursuant to RCW 70.105D.090(1), the City 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, the City obtained all federal, state, and local permits required to conduct the cleanup action. All permits are available for review in the project files at Ecology's Southwest Regional Office records center and at the City of Gig Harbor, Engineering division. The specific permits obtained are:

- City of Gig Harbor Shoreline Management Substantial Development Permit
- Washington Department of Fish and Wildlife Hydraulic Project Approval
- U.S. Army Corps of Engineers Section 10, 404 dredge and fill permit
- State of Washington, Department of Ecology, Section 10, 401 Water Quality Certification.
- City of Gig Harbor Land Clearing and Grading Permit

The City has also conducted State Environmental Policy Act Review for the project and issued a Mitigated Determination of Nonsignificance August 20, 2007.

The City 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 the City 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 the City shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the City 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 the City and on how the City must meet those requirements. Ecology shall inform the City in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The City 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 the City 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. Land Use Restrictions

Under Section VII of this Agreed Order the City shall submit an institutional controls plan to Ecology. The institutional controls plan that shall include land use restrictions, maintenance, and notification provisions to provide for perpetual protection all areas where contaminants are left in place beneath soil or sediment caps, in accordance with WAC 173-340-440(8)(b). A sample of a Uniform Environmental Covenant is included as Exhibit E.

R. Financial Assurances

Pursuant to WAC 173-340-440(11), the City 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.

S. Periodic Review

As remedial action, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Site the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. At least ninety (90) days prior to each periodic review, the City shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). The first periodic review for this site shall be conducted in June, 2011. Ecology reserves the right to require further remedial action at the Site under appropriate circumstances.

T. Indemnification

The City 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 the City, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the City 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.

Should a court of competent jurisdiction determine that this Agreed Order is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the State of Washington and The City of Gig Harbor, its officers, employees and volunteers, the City's liability hereunder shall be only to the extent of the City's negligence. The provisions of this section shall survive the expiration or termination of this Agreed Order.

IX. SATISFACTION OF ORDER

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

X. ENFORCEMENT

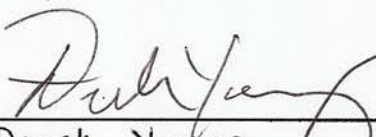
Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

- 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 the City refuses, without sufficient cause, to comply with any term of this Order, the City 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: _____

City of Gig Harbor



Derek Young
Mayor Pro Tem City of Gig Harbor
Gig Harbor, WA 98335
(253) 851-6170

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY

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