

**PUBLIC HEARING TRANSCRIPT
WHATCOM WATERWAY DRAFT CONSENT DECREE
AND EXHIBITS**

August 8, 2007

**Bellingham Cruise Terminal
355 Harris Ave, Bellingham, Washington**

Moderator

I'm Bari Schriener. I'm your hearings officer for this evening's public hearing on the Whatcom Waterway Consent Decree or proposed legal agreement. The Consent Decree includes the cleanup plan, the public participation plan, and other exhibits.

Let the record show that it is now 7:46 p.m. on August 8, 2007. This hearing is being held in Bellingham at the Bellingham Cruise Terminal at 355 Harris Avenue.

The notice of this hearing was published in the *Bellingham Herald* on July 8, 2007. In addition, notices of the hearing were mailed to about 650 interested people. Email notices were sent to 136 interested people, and a news release was issued on July 13, 2007.

I will be calling people up to provide oral testimony tonight based on the order that people signed in. Once everyone who has indicated that they would like to testify has had the opportunity, I will then open the floor again for anyone who has changed their mind.

Due to the number of people who have indicated all ready that they want to testify, we're going to keep everybody's comments to 7 minutes. At about a minute from the end I will indicate, I will hold up my fingers so you know you have a minute left. Then at 7 minutes, I will ask you to please summarize your comments so that the next person can come up.

When I call your name, please step up to the microphone in the center of the room there and state your name for the record. Please speak clearly, so we can get a good recording on that recorder there.

First person is Tip Johnson. I apologize in advance if I mess up anybody's names. He will be followed by Elizabeth Kilanowski.

Tip Johnson

Thank you for the opportunity to comment on the Whatcom Waterway Cover-up. I remain unconvinced that it adequately protects the public's health, safety, and welfare. There are a number of reasons. Chief amongst them is that regulators refuse to account for hundreds of tons mercury that they know exists.

It's called a cleanup, but tossing mud over mercury is really a cover-up I don't think it's a long-term solution. I'm very concerned about leaving it loose in the environment.

Why is mercury a concern? I think we've all seen that, but I would really encourage people to Google University of Calgary Mercury and see a video micrograph of how mercury actively degenerates brain neurons.

You want to Google mercury cycling, you can see why it's irresponsible to leave it in the sediments, even the sub-sediments.

Based upon the mercury, the estimated mercury replacement in the chlor-alkali system which happens to correspond very closely with the industry estimates for mercury used per ton of pulp produced here, GP probably used around 600 tons of mercury in their operation.

We're talking about 15 to 20 tons in the bay; we know they buried another, oh, 15 tons on-site; we know they dumped it along Whatcom creek at the Haskell business site, a stream reserved for juvenile fishing.

That's about, so, OK, we've accounted for about 40 tons. My question is where is the rest of it? And how can we have a plan without knowing. How can you assert that your plan will protect the public's health, safety, and welfare when we've got all that other mercury around?

Regulators have refused to install mercury vapor monitors at ground zero, where the Port's proposed land uses will invite people to live there permanently and to come and visit and enjoy the waterfront. I don't know how we can assess the risk without having the information.

Regulators refuse to conduct a public health survey to see why Whatcom County has higher than ordinary instances of cognitive disorders and diseases often associated with mercury exposure.

Guess what regulators refused to test for when they did a 3-year air-quality study of downtown Bellingham? Mercury.

Seems to me the plan is tailored basically to prop up the Port's interest in privatizing the waterfront and building a marina for mega-yachts that few can locally afford. We're very careful to get the highest cost-benefit ratio for the project, but shouldn't that concern to

other public interests that are directly affected by the project? Or if not, why not? Seems to me that there are some very important costs to consider.

What costs? Potentially poisoning the community for generations to come should be enough. Those are huge potential health costs, but there is more. The public, after paying for the remediation and infrastructure, will likely lose our only chance at assembling a broad public waterfront. But there is more. The public now owns an industrial water supply and a wastewater treatment facility that GP left behind. We should feel lucky to be able to recruit businesses with the prospect of water supply and water treatment but the Port's plan squanders this resource. The public will bear the cost of their foreclosing on the opportunity to attract family wage jobs. But then Port officials already have them. We cover those costs.

But there's more. Bellingham is going to need additional treatment capacity—it's not a question of if, it's a question of when. The very regulators pushing this plan are going to require us to treat stormwater; if we ever want jobs we'll need industrial treatment.

Bellingham is growing; eventually, we'll need additional sanitary treatment. Where will we do this? What will it cost? Who's going to pay? And with what jobs will we afford it?

I'm just amazed that regulators, the proponents, and virtually every elected official refused to address these vital public interests. Whose interests are they supposed to be addressing? I think this plan essentially steals from the public and benefits few. I don't believe it protects the public's health, safety, and welfare. I believe this project needs a much more comprehensive consideration of all the public costs involved. I understand it's not directly a MCTA concern, but if DOE is going to be requiring us to treat stormwater, that cost should be included in this analysis I believe. Thanks.

Moderator

Thank you. Elizabeth Kilanowski, followed by Darren Williams.

Elizabeth Kilanowski

I'm Elizabeth Kilanowski. Can you hear me? Is that OK? Thank for the opportunity to address the public hearing tonight. I wish to enter into the record a memo sent from the faculty of Western Washington University's geology department to officials at Western Washington University, the City of Bellingham, and the Port of Bellingham. It's a public document; it addresses the seismic risks to the upland GP site. This site is adjacent to the Whatcom Waterway site which we're discussing tonight and the same seismic issues that are addressed in this memo apply to the Whatcom Waterway.

I have additional copies for folks here who want to get one.

Last fall in both the public hearing and written comments, I submitted testimony on seismic hazards including liquefaction. And Pete I'd like suggest that you not tell people that liquefaction doesn't affect or breach caps. They do; sand boils developed as a result of liquefactions. Liquefaction can and do breach caps so I'd suggest you don't say that anymore.

I am concerned that the seismic issues that I addressed last fall were not adequately addressed in the responsiveness summary. In addition, the person who did respond to my comments did not understand the nature of tsunamis and their effects on bottomlands. There was no reference listed that the writer had any knowledge of what they were talking about. They confused sea-level rise with two phenomena that include both sea-level rise and sea-level fall in equal measure.

I don't think that this process is ready to go forward to a Consent Decree. Thank you.

Moderator

Next is Darren Williams followed by Tom Winter.

Darren Williams

Yeah, I'm Darren Williams. I'm a Whatcom County resident. I also represent the Longshoreman Union here in Bellingham Bay. I'm going to speak from a couple different points today because I'm a Whatcom County resident, a taxpayer—I have great concern about how much money this is costing; I'm also a person who enjoys the recreation. So I want to speak to what this plan will do for enhancing some recreation. According to our community vision, we've all seen here in a slide earlier tonight. I'm also going to talk from the standpoint of being a labor officer. I represent about 60 people who work on the waterfront of Bellingham Bay. And have been doing such since the teens—1917. We've been an organized labor union since 1934. So we have an interest in making sure that we move forward. That's what I think is important.

There's no perfect plan. There's not a single concern that is going to be addressed 100%. What we've seen tonight is a plan that addresses most issues to the best of its ability. And that's the direction that I believe we need to go. We need to implement this plan and get something going. We've been working on the docks down there watching the waterway fill in with mercury and sediment and everything else since the last time it was dredged back in the 60's. Nothing has happened.

There have been many results of that as well. We've lost jobs because we can't get ships in there anymore. Now the community is moving into a new phase on the waterfront. We want to implement a different kind of waterfront. Well, we're going to have do things a little bit different. One of them is we have to do it cost-effectively. I cannot see spending over \$100,000,000 down there and anyone being able to afford it. So as a taxpayer, I want to get the most for my money.

So as you put up the graphs and whether they're 100% accurate or not, I don't know. But I do know that there's some compromise that has to be made. And there has to be compromise made or nothing will happen. So I'll keep it short by saying I support this plan. I think we should move forward with it, and we should get started. It's another 6 years even if we started today before anything's going to get completed. That's another 6 years I don't want to wait. I don't want to wait and study this thing for another 10 years to try and satisfy 100% of everyone's concerns because it won't happen. And take note, sometimes that is the agenda. We bring up concern after concern after concern to stop anything from happening.

Well, I think today we've got a plan that will work, and we should move forward on it. Thank you.

Moderator

Next we have Tom Winter who will be followed by George Dyson.

Tom Winter

I'm Thomas C. Winter Jr. I'm speaking on behalf of People for Puget Sound. We're a non-profit, environmental organization whose mission is to protect and restore Puget Sound and the NW Straits.

Included is a specific goal to protect and restore the 2,000 miles of Puget Sound's shoreline by 2015.

Our objective for the Whatcom Waterway site is to remove the maximum possible amount of existing mercury safely and expeditiously. To minimize the methylation of any remaining residual and to protect the sound from future contaminants. We offer the following four comments for your consideration:

People for Puget Sound supports the removal of the greatest amount of contaminated sediment by dredging, at a level between alternatives 7 and 8 in the DCAP. We want to see dredging everywhere it makes sense. We're not sure that a complete analysis has been completed in all locations.

It is more expensive to dredge, but this cost difference is small when evaluated in the context of the long-term improvement to Puget Sound and the resulting benefits to future generations.

Second, despite the responsiveness summaries comment that methylation and deeper sediments is contained by geochemical properties, considerable uncertainty exists.

Capping the mercury laden sediment in place raises a concern that methyl mercury compounds will evolve and remain in these sediments for years. As illustrated by the experiences in LaVaca Bay, Texas, still there after 30 years. And San Pablo Bay, California, there over a century.

Third, the effects of rising sea levels are a major uncertainty. The shore elevation of the proposed developments is around 14 to 22 feet. The 100-year flood elevation is 12 to 13 feet. Estimates of sea-level rise by 2100 range from less than a foot to several meters, so the safety margin is small.

Fourth, the reported increased seismic risk in Whatcom County to include the recent discovery of active faults is unsettling. As illustrated by the June 1 memorandum by the Western Washington University Geology faculty. The one that is going to be placed into the record.

A major seismic event could dump considerable residue into the Sound. Overall, unacceptable uncertainty remains concerning this project. Hence People for Puget Sound recommends the following:

First, the removal of the mercury contaminated sediment to the maximum extent possible, while providing the utmost in habitat restoration and open space along the waterfront.

Second, the minimization along the waterfront of structures and other sources that could result in debris being dumped in the Sound in case of a major seismic event.

Thank you.

Moderator

Next we have George Dyson, followed by Mark Buehrer

George Dyson

Thank you. It's actually George Dyson. 435 W Polly Street, right on the downtown waterfront. So I'm speaking really as an adjacent property owner. With a very selfish agenda. I own property right next to the head of the waterway. I'm shocked. I'm repeating the comments exactly what I said 8 months ago. Which is really not been addressed. The head of the waterway is not being cleaned up in this, the chosen alternative. To me, that's not good and I think you know that.

There is a real problem with this cost benefit. You have to fairly account for the costs. I don't think we've looked at—the real costs long term of not cleaning up are going to add up and mount. All of this monitoring forever is very expensive compared to doing it. Now is the time. It's going to be a lot harder to cleanup once we dump more material on top and have even sort of greater risk.

It's also, I keep reiterating, it's driven by land use. It shouldn't only be driven by land use. It should be driven by water use. The question here is cleaning up the waterway. We should look at how that water is used. Bellingham is here because that was the navigation channel that put Bellingham on the map where it is. There's been no real public discussion of us relinquishing that forever. We forever will be giving up the right to that channel being navigable.

Maybe that's what we should be doing; maybe we shouldn't. I urge everyone to give that, as of now, that is a federal navigable waterway and it has to be cleaned up. Now you may say the owners are changing that—it's not changed yet. I think we're a little premature to say we're leaving that area not cleaned. Maybe we want to fill it again later, maybe we want to clean it and then fill it with sand, but we ought to clean it.

Now I'll just go through the points in my 7 minutes that I made before.

I question whether the head of the waterway is naturally recovered and also whether it's limited to 12 cm. If you wade out there in 12 cm gumboots you'll have mud in your feet right away. You need about 30 cm gumboots to walk around in there, let alone dig clams or anything.

Sample data. I'm partly a scientist. I speak at scientific conferences. There's not good science behind this. The data is remarkably sparse. It's very questionable to make these \$100,000,000 decisions based on the data we have. You need a real time series of change over time. We've had very, very spotty sampling. Certainly not enough to make these decisions. Likewise we have very poor data on actual sedimentation, which is changing. The inner waterway most of the sedimentation was wood debris. That source of sedimentation has stopped. We have no real evidence that Nooksack is sedimenting in the waterway or that Whatcom creek is. We don't know what is happening. Sediment may be eroding.

Likewise would be that layer of woody debris from the mill has a completely different biological activity from what will happen now. That as far as I know has not been looked at, at all, by any biologists or microbiologists.

The other important fact is that the standards for mercury contamination are not fixed; they've changed over the years. Look at what was acceptable here from in 1960 to 70 versus what is acceptable now. In 10 or 20 years from now, those standards again may change and that has not been put into the cost accounting of how much this is going to cost if regulations change and we have something that was acceptable now but is not acceptable once we've supposedly cleaned up.

I think the other ultimate cost is that by not cleaning up, we impact the property values of people like me who own property near this waterway. If it forever carries this taint of well we left all this stuff there and didn't do a thorough job, it makes that property less desirable. We have a clean ocean marina but not a clean waterway, and that's just simply not fair.

There was a lot of attention 8 months ago that we needed more monitoring, but when you read the fine print, or at least the fine print I read, all I saw was that we're going catch male Dungeness crabs from at least 3 sites at year 3, year 5, and year 10, and that's our biological tissue monitoring. I think that's just grossly insufficient in terms of make these big decisions on so little data.

So I guess I'll say what I said before: the problem with the preferred alternative for the cleanup of Whatcom waterway is that it doesn't. I think we can do way better as a community and we deserve better, and we've got the technical skills here to do a far better job of this at a reasonable cost and move ahead quickly. Thank you.

Moderator

Thank you. Mark Buehrer followed by Wendy Steffensen

Mark Buehrer

I've got a PowerPoint slide, is it possible to put that up? I do have handouts so I could submit that, right?

My name is Mark Buehrer. I'm the director of 2020 Engineering. Professional, licensed, civil engineer, 25 years plus experience.

I've lived in Bellingham for 20 years. The concern I have is the method of dredging. I'm concerned that during the proposed dredging, the sediments are going to get stirred up and drift and disburse out into areas, perhaps contaminating areas that are capped and cleaned now.

So, what I've got here is a method of dredging that could be performed that would actually, by using directional drilling technologies that are out there, actually take and remove the sediments that are underneath the contaminated layers. Take the clean sediments that are underneath there and as we move those clean sediments, it actually, the ground surface of the dredged area would settle, and you would obtain the depth of settlement that you would need for shipping. So, with that method you would only be dredging or removing clean materials. That clean material then could be used for capping other areas that are needed. There would be lots of cost savings because you're not dealing with a lot of contaminated materials, and in particular, the dredging technologies that are out there are pretty aggressive, and a lot of disbursement of soils and contaminations that are in there would be really hard to control it all. We shouldn't be making more of a mess with things that are already in a fairly stable state.

If anybody else is interested, I have a handout here that you could basically look at. It's pretty simple. Methods of doing this and I think it should be something that's looked into, and I think it could be a really good environmental solution; it would also be something that would save a lot of money and be really cost-effective.

Thank you.

Wendy Steffensen

Hello my name is Wendy Steffensen. I'm the North Sound Baykeeper with RE Sources. RE Sources is a local non-profit environmental group here in town. We have well over 500 members most in Whatcom County and many in Bellingham.

So I submit these comments on their behalf. The North Sound Baykeeper has been involved in this process for a long time. Before I became the North Sound Baykeeper about 4 years ago, we were involved since '96. We've been involved since then, attending meetings, doing research on this process, submitting comments. This last round of RI/FS documents, we actually convened a public participation panel and spent many, many hours going through those documents and really digging in and researching the issues. We submitted extensive comments. And I appreciate some of the changes that Ecology made, but we were all very disappointed in the actual responsiveness summary. We didn't feel that Ecology answered our questions and maybe part of that is because Ecology decided to lump all of the questions into categories and answer them as kind of a pooled way.

We asked some specific technical questions and did not get specific technical answers back. So we're disappointed. One of the things that I would like to mention as part of that. We talked about the level of mercury in seafood, and while Pete is right, the level of mercury in seafood right now is above the regional norm and that may be OK for you and I who are occasional consumers. But the question we still have is whether it is OK for subsistence and tribal fishers.

We did extensive calculations and we asked very specific questions that called the calculation of the BSL, the bioaccumulation screening level, into question, and we did not receive answers back. So for me, the question on the table is still: is the seafood in Bellingham Bay safe enough to eat for people who eat it at high levels? And I think that is an important consideration that we need to address before we move on.

In addition, we also ask that there be a thorough evaluation of capping and dredging at different sites. We realize, you know, the best thing would be to not have done this in the place and then let's dredge it, let's remove it all and contain it all and not have any problems.

We realize that dredging everywhere isn't going to be a safe solution. So what we asked for was actual analysis of kind of the pros and cons associated with capping and dredging at each site unit, and we weren't given that. But what we were given in the RI/FS was kind of a glowing report of how capping works and dredging doesn't, very short treatment of dredging, much more extensive treatment of capping. It was not balanced, and I realize that this was written by the Port consultant and there's a method—there's a specific cleanup option that would make sense for the Port—but we're relying on Ecology to make sure that these things get equal weight and are evaluated fairly, and we don't believe that happened RI/FS and we're hoping and it didn't happen in this cleanup action plan either. So I don't, I'm really asking that you all go back and do a better job of being fair in these documents.

I noticed that in the cost-benefit analysis, you actually assigned weighting factors to protectiveness and permanence, and that made a lot of sense. What of course was interesting to me that we still came up with the same answer. And maybe that's exactly what it is, but what we did, Ecology assigned the values to each of those factors, and if my colleagues and I sat around the table, we would probably come up with different answers. So I'm wondering if there shouldn't be a neutral third party to look at that because I believe Ecology has already basically bought into the decision of alternative 6 and so I think that needs to be re-evaluated.

In addition, cost, protectiveness, implementability, and all of these seven factors, they're all weighed against cost, like cost is a major factor. And I'm curious and this may be kind of a MCTA sticking point, but I'm curious why cost isn't one factor and not like the be all and end all that everything gets weighted against.

So in closing, I'll just say what we'd like is a 6-foot cap everywhere, dredging in all erosional areas. Right now you're capping some erosional areas and that's a concern. And a re-evaluation of the bioaccumulation screening level, contamination mechanism at the Log Pond cap, and seismicity. And I'll be turning in further comments. Thank you.

John Servais

I'm John Servais. I live here in Bellingham. One clarification throughout this evening is you folks up here have talked about this you have referred to it as the Consent Decree. It's actually the draft Consent Decree and I think we need to keep that in mind and bring that up often.

And I do want to make a comment that it's too bad that we all have to be spending a beautiful August evening inside and there's a lot of sail boaters out there and the races and a lot of them have a deep love and concern for clean, healthy water in Bellingham Bay. They made the wiser decision to be sailing tonight.

You know, Lucy, you and I know each other from back in 1996 when I was coming to these Bellingham Bay pilot meetings. And back then I expressed an acute frustration, and I put forth on the record at that time that before you go planning what you're going to do to clean up the waterway, that you do a grid analysis of where the mercury is. That was never done. Instead, DOE selected different places to choose to test for mercury with test holes. That has allowed, in my opinion, looking at where they were taken, to avoid the worst mercury contamination in the upper waterway.

Only a grid when taking test samples from a dense grid can provide us with a true picture of what and how much and where the mercury is. We still don't know, as Tip Johnson's mentioned, a couple others, we have no idea, you folks don't know, Georgia Pacific knows, and they're not telling and nobody can force them to tell. And we've bought all their liability for a dollar. So here we are tonight.

But the point of that is that for 10 years, DOE and the Port of Bellingham have a zero track record of helping us clean up the waterway or stop the pollution. While DOE and the Port for 30 years watched GP dump hundreds of tons of mercury into our environment. And it is only now that GP is gone away that oh my gosh we'll clean it up. But now it's at our tax dollar, not at GP's cost.

You know the Port put me on the 20/15 waterfront or WIST – Whatcom International Waterway or shipping terminal committee back in 1992. We existed for about a year. We met, we discussed what the future would be for the shipping facilities in Bellingham Bay, and as we had engineers and others talk to us, we found out that if they dredged, the docks would fall over. If you dredge now those docks are going to fall over. If you dredge the outer waterway as you're planning to, it would bring it down to a depth that the docks are going to fall over. That cost is not in there anywhere. We want to bring NOAA in here and dredge a little bit the docks will fall over.

So we have accounted for the millions of dollars that it's going to take to put those docks back up. And that's something that needs to be taken into consideration somewhere because we folks here, Whatcom County, Port of Bellingham District, or Bellingham, are going to be paying the taxes for all of this stuff.

You're making this plan here tonight based upon this draft decree, based upon the uses of the property. You said that that this was based upon it, and yet as George Dyson related, you're going about it backwards. The uses have not yet been approved and so the uses may not be the actual end uses. But if the cleanup plan or the cover up plan or whatever we're doing actually takes place, and then later those uses are not implemented, we have the wrong clean up for what the uses may be.

The ASB is very much up in the air. As I understand, the Lummi and the Nooksack have not signed off and might not sign off. They might require the Port to put that back into a mudflat. Truck all the rock off somewhere else. Maybe not that extreme, but a marina is not a given at all.

The criteria, a couple of other specific things for the record. I've said we have no knowledge of where the mercury is. We have no grid testing. Those are two very important things and I'm trying to check my notes here very quickly. I'm going to close with this. I'm a NW citizen—we're keeping a record of these things, and we're going to be putting these things up. Like the bridge in Minneapolis that's now turning out to be designed by some bad criteria, we're going to keep track online the records and the individuals of the departments that are approving of what many of us feel is a dead end, no pun intended, plan for our beautiful Bellingham Bay. And when in 5, and 10, and 15, and 20 years from now, it turns out to be a love canal, we do want to remember that it was purposely entered into and that many of us pointed out the problems that were going to arise, and that it was just steamrollered through anyways.

So thank you very much for the opportunity to comment.

Mike MacKay

Ok, thank you. My name is Mike MacKay. I live at 3107 Valet Street here in Bellingham. I'm speaking as a citizen of Bellingham, and I also work with the Lummi tribe. I have some background in fisheries and some knowledge, some firsthand knowledge of some of the salmon, juvenile salmon that do utilize this waterway and the log pond area.

But tonight I am speaking as a citizen. I've reviewed many of your documents although not thoroughly, and I hope to be able to provide some technical comments by the deadline date. I was also at the public hearing back in December and heard many of the comments by folks that I'm hearing again today. And I'll have to say too that I'm very disappointed in the outcome of the reports of the documents and the conclusions and the choice of the alternative that you selected.

I also go back quite a ways in terms of observing the process of sediment cleanup in Bellingham Bay, even before 1996, so even before there was a pilot, I attended a couple of those Ecology meetings you know. And what's remarkable is that over that span of probably 20 years, I've not really seen a significant shift in the policy and the direction Ecology has taken in terms of cleanup strategies. It's always been capping. It's been, you know, not really support of strong, scientific, biological testing.

I'll have to reiterate what George said about the amount of scientific information we have on the biological resources and the health effects of bioaccumulation. I mean we have so very, very little data it's just remarkable. In fact, one of your documents in the responsive summary indicated, if I can find it, says in referring to the crab bioaccumulation work and it refers to the data collected there. I don't know if I can find it. I think it's on this page here. Oh yes, it says sediment and tissue data used for the BSL development included paired data, and I also disagree very much with the BSL levels that you have calculated.

It says it's based on paired data with the most important data set being the Dungeness crab tissue data collected from Bellingham Bay.

Well, I'll have to say I'm at least partially responsible for perhaps up to half of that data set because of some comments we made years ago suggesting we'd go out and actually evaluate the mercury levels in the Dungeness crab, and as a result of some of those comments, Ecology responded, and their research unit actually came up, and we took them out in a boat, and we set our crab pots in Whatcom waterway, and we wet them all across the bay all the way out to Chuckanut Bay. Gathered samples, lo and behold, we found that there were levels of mercury that had this increasing concentration the closer you got to Whatcom waterway, which really surprised me. They didn't really look at the juvenile Dungeness crab as I had suggested. Instead they looked at adult legal males and people that know crab, they move all over the bay. They're very, very mobile animals, and for there to be a trend that was evident just in those very few samples was pretty remarkable.

All that aside. I'll have to say I'm a supporter of decisions based on good science with empirical data. And we just definitely need more empirical data to do a better job of our health assessments.

Also, you know I find it also difficult to accept that the sediments that we're going to be removing are those that are in the ASB pond, which is not really exposed to the marine organisms that we eat, and it's also an area that we're proposing for removal is that outer waterway that you described, Lucy. And from a biological point of view, from a fisheries point of view, it's all about exposure risk to the animal. So what you really want to do is remove those sediments that are the hottest that are in closest proximity to the critters that are going to be bioaccumulating those contaminants, phenyls, and mercury.

So, I mean to me it was just obvious that the Log Pond would be the first place because it's a shallow intertidal zone where you know we can set out our seine net and catch juvenile Chinook and many other salmon species. You know, 6 months out of the year in the Log Pond, I've seen them. But instead, we're proposing removing sediments that are deeper and maybe not as associated with those marine organisms as those along the shoreline.

So anyway, I guess I got to wrap it up. But I'm also very disappointed of the 162 letters of comment in your responsiveness document, most were in support of alternatives that were more protective of human health and the environment. Not surprising, the key environment agency shared your preferred alternative 6, indicating that efforts were taken to present a unified policy by those 3 governments: the Port, Ecology, and the City of Bellingham.

I've concluded that in this case these governments have let us down, that they're not really representing the voice of the community. We want more protective actions, you know.

I believe, instead considering the opportunities to readjust the plan, using some of the well-founded, thoughtful, technical data that was presented by the Baykeeper and People for Puget Sound, you know that technical information was largely ignored and that's really sad. I think saddest of all is that we recognize that there's really well-meaning people in these agencies that have good backgrounds and understand what good science is and are able to make responsible decisions, and, but you know when you read that responsiveness summary, you just look at that poor staff member that had to sit down and write these responses to all these things people said. You only had to conclude, you could only conclude that the reason that effort was mounted was prepare a legal defense against what the public might say against this plan. And I just thought to myself, what a waste of human effort, you know, when that same energy can be used to come up with creative, out-of-the-box solutions to some of these cleanup problems. It's just so sad.

I'm going to leave you with that. Thank you very much.

Frances Badgett

Ok thanks. I'm Frances Badgett and I'm representing the Bellingham Bay Foundation this evening. We are a non-profit and we have three goals: cleanup of the waterfront, public ownership, and a great redevelopment.

Now that we are shifting from the Port's cleanup to your joint cleanup with the Port, the Bellingham Bay Foundation would like to reiterate that we do not feel alternative 6 is protective for the community of Bellingham.

It's really important that the community have confidence in the cleanup and we feel that alternative 6 does not do that. It is, we would like a cleanup that is genuinely protective for generations to come or else the Whatcom waterway will not function as the community, habitat, and cultural resource that it should be.

I also add my comments to those who say that the responsiveness summary did not address the technical detail of those individual comments and that the comments were lumped together, and the same response was sort of attached to batches of comments and the end result. I realize that is to prevent repetitive, having to repeat yourselves over and over again. But the end result is that the responses do not seem considered or careful, especially given the level of detail and technical expertise that was reflected in those comments.

We are extremely lucky in this community to have geologists, to have Wendy Steffensen, to have Mike MacKay weigh in. Bellingham Bay Foundation was lucky to have Greg Glass speak on our behalf. And to not have any of that expertise reflected in the responsiveness summary or in the cleanup action plan seems absolutely a waste.

Despite some added dredging in the inner waterway, there's very little change between the document that so many of us in this room and in this community dispute. While the Foundation appreciates the addition of the 30-year monitoring period, we feel the monitoring period should be even longer, and it should be more frequent. Frequency being as big of problem as length.

With the Log Pond, we're almost at the 10-year mark, and then it doesn't get evaluated again until year 20, and then year 30, and what will the mercury levels be then? Since the surface mercury levels are going up.

What's interesting to me is you're partially removing the sediments in the inter waterway for remediation purposes as you state, yet you refuse to remove the most contaminated sediments, the Log Pond, ASB shoulder, Starr Rock, and the area around the shipping terminal because the Port insists on a luxury yacht marina at the ASB. The Bellingham Bay Foundation stands by its assertion that the ASB should be used for hydraulic dredging and then either cleaned out and made into a park, development, habitat, whatever that should be the community's decision made by all of us.

In this document, Ecology states that the land use decision does not rest with you, you have no part in that decision. Yet you bend the protectiveness and efficacy of cleanup around that land use decision; that seems unbalanced.

In closing, I would like to say that ignoring the citizens' consistent, loud pleas for a higher level of cleanup than proposed by the Port is in direct conflict with the Governor's goals of a Puget Sound clean enough to swim, dig, and fish in by 2020.

In Section 5 of the draft cleanup plan, you state Ecology reserves the right to consider other information including issues raised during public comment and/or conduct its own evaluation of alternatives to assist in making its cleanup decision. It's my hope that you will assume this power that you have been given and not to capitulate to pressure from the Port.

Thank you.

Moderator

At this time, is there anybody else who would like to provide testimony that didn't indicate earlier?

If you would like to send Ecology written comments, please remember they must be received no later than August 13, 2007. You can send them to Lucille McInerney, Department of Ecology, 3190 160th Ave, Bellevue, Washington 98008, or by email to lpeb461@ecy.wa.gov.

This information is also available on the fact sheet in the back of the room. All testimony received at this public hearing, along with any written comments received, will be part of the official hearing record for the proposed consent decree of the Whatcom Waterway site.

Following the close of the public comment period on August 13, 2007, Ecology will prepare a responsiveness summary, which summarizes and responds to all comments received. The responsiveness summary will be placed on Ecology's web site and in various public parties. All persons who submit comments during the comment period will be notified when the responsiveness summary is available.

The next step in the process:

If significant changes are made as a result of public comment, the consent decree will be issued again for public review. If no significant changes are made, Ecology will issue a final cleanup action plan and other final documents and enter the consent decree in Whatcom County Superior Court. The cleanup will then move forward into design and permitting. The draft engineering design report is expected to be completed for public review in late 2009 or early 2010. If we can get further help to you, please don't hesitate to ask.

On behalf of the Department of Ecology, thank you for coming this evening. We appreciate cooperation and courtesy. Let the records show this public hearing has adjourned at 8:38 p.m. Thank you.