

**INTERGOVERNMENTAL FRAMEWORK AGREEMENT BETWEEN  
THE LUMMI NATION AND THE PORT OF BELLINGHAM**

**THIS AGREEMENT** is made this 17<sup>th</sup> day of August, 2009, between the Port of Bellingham, a Washington municipal corporation, hereinafter referred to as the "Port," and the Lummi Nation, a federally recognized Indian Tribe, hereinafter referred to as the "Lummi Nation" or "the Nation."

**WHEREAS**, the people of the Lummi Nation have lived along the shores of Bellingham Bay since time immemorial and the Port of Bellingham was formed in 1920 and since coexisted and this coexistence will remain far into the future; and

**WHEREAS**, the Lummi Nation and the Port of Bellingham share numerous common interests and visions of the future, including:

- Preserving the rich cultural history of the area, including the culture of the Salish people, for generations to come;
- Cleaning up, restoring, and redeveloping the Bellingham Bay and Bellingham Shoreline in order to enhance the quality of life for the larger Whatcom County community and the Lummi Nation;
- Creating a vibrant economy through increased job opportunities and enhanced prosperity for the larger Whatcom County community and the Lummi Nation;
- Providing additional economic development opportunities for the Whatcom County community, including the Lummi Nation;
- Protecting, restoring, and enhancing the area's natural resources;
- Building on the historical, economic, and cultural value of fishing and maritime activities, including providing moorage opportunities for commercial fishers, including the Lummi commercial fishers;
- Providing educational opportunities for current and future generations; and

**WHEREAS**, the Parties to this Agreement wish to resolve differences in how their goals are to be achieved and to avoid the cost and uncertainty of litigation through a mutually beneficial resolution of these issues; and

**WHEREAS**, this Agreement provides a framework to resolve known issues, address short-term needs, and create significant new long-term opportunities through business relationships and securing funds necessary to implement the goals of this Agreement; and

**WHEREAS**, this Agreement recognizes that the Lummi Nation seeks increased opportunities for a better future for the Nation and its members, and that the Port desires to attract investment

and jobs to benefit the Whatcom County community, including the Lummi Nation, and to move forward on its Bellingham Bay Clean-up and Redevelopment projects; and

**WHEREAS**, this Agreement encourages and provides the foundation and framework for mutual respect and cooperation between the Parties which will benefit all the people of the Whatcom County community and the Lummi Nation, their children and future generations; encourages a cooperative relationship which will reduce future conflicts; and provides greater certainty to the Port and the Lummi Nation.

**NOW, THEREFORE**, we the undersigned agree to enter into this Agreement between the Lummi Nation and the Port of Bellingham to resolve past differences and to work cooperatively into the future.

## **I. PURPOSE OF THE AGREEMENT**

The purpose of this document is to formally memorialize the agreement of the Parties to implement, in good faith, the goals and objectives identified by the Parties in order to resolve past disagreements regarding the future of Bellingham Bay and the Bellingham Shoreline in Bellingham, Washington, and to jointly pursue future opportunities in Whatcom County. This Agreement is intended to provide guidance in the preparation of written implementation agreements that are legally binding between the Parties and enforceable in accordance with the terms set forth below. Each such executed implementation agreement shall become a separate standalone agreement, with respect to every other implementation agreement, and each implementation agreement shall be an addendum to this Agreement. The Parties agree to act in good faith and to use their best efforts to negotiate implementation agreements appropriate to specific goals and time frames identified by the Parties.

## **II. BACKGROUND**

The Lummi people have lived, fished, hunted, gathered, and conducted cultural practices and commerce in and around Bellingham Bay since time immemorial. The Lummi people reserved the ability to continue their way of life throughout Washington, including but not limited to, Whatcom County, as part of their treaty with the United States in 1855. In *United States v. Washington*, the federal court affirmed the legally binding supremacy of the Lummi Nation's treaty right to take fish throughout the pre-treaty usual and accustomed areas (known as the Lummi U & A) including Bellingham Bay. It has been an important goal of the Lummi Nation to have Bellingham Bay cleaned up and for significant habitat restoration to occur in order to protect and enhance fisheries resources (finfish and shellfish).

For more than 100 years, Bellingham's waterfront served the region as a bustling industrial area, a transportation gateway, and the home to many maritime activities. Activity began in the early 1850s with the development of a sawmill on Whatcom Creek. Since then, large areas of Bellingham Bay have been filled, dredged, and armored, and formerly productive tidelands and intertidal areas have been converted into uplands and waterways. Over a century of heavy industrial activity on the waterfront left a legacy of environmental contamination in the land and water. Shipyards, landfills, timber ponds, food processors, pulp mills, and paper plants left behind chemicals and waste which need to be cleaned up and the habitat restored.

The Port has a rich history, beginning with its formation in 1920 (pursuant to state law) and continuing to present day. The Port's mission is to fulfill the essential transportation and economic development needs of the region while providing leadership in maintaining greater Whatcom County's overall economic vitality through the development of comprehensive facilities, programs, and services, including support of the Lummi Nation's economic development goals.

In January of 2005, the Port acquired 137-acres of Georgia-Pacific's waterfront property and partnered with the City of Bellingham to develop plans to clean-up and redevelop this industrial property to support a variety of uses including public parks and promenades, residences, businesses, and industry. Combined with adjacent Port and private properties, 220-acres of the Bellingham waterfront forms the Waterfront District that is expected to be cleaned up and redeveloped.

There are six state-listed clean-up sites within the 220-acre Waterfront District redevelopment area. The Port acquired most of the contaminated property in order to ensure that the contaminated sites would be cleaned up now, rather than sit idle in a contaminated condition into the future. The Port took over the clean-up responsibility to help revitalize a stagnant waterfront economy and to bring forward the community's vision of a vibrant, mixed-use waterfront.

The clean-up, habitat restoration, and redevelopment of the Bellingham Shoreline extends beyond the Waterfront District as depicted in Exhibit "A" and includes restoration and development projects listed on Exhibit "B", which includes Port facilities in Blaine.

The Port's ability to permit, implement, and fund the restoration projects are dependent on its ability to simultaneously permit, implement, and fund the development projects because the uses set forth in the development projects help define the restoration projects and the development projects provide economic viability for the restoration projects. Therefore, both the restoration projects and the development projects must move forward simultaneously.

### **III. GEOGRAPHIC SCOPE OF THE AGREEMENT**

The principal geographic scope of this Agreement includes the current Bellingham Bay Pilot Study Area from Post Point to the south, to the cement plant dock to the north, and waterward to the Bellingham Bay PSDDA site. The area is referred to as the "Bellingham Shoreline Area." Port facilities in Blaine are also included.

Within the Bellingham Shoreline Area, the old Georgia-Pacific site and other Port properties are referred to as the "Waterfront District." The geographic location of future business relationships between the Port and the Lummi Nation may be within the Waterfront District and/or in other areas within Whatcom County.

Elements of this Agreement are based on resolving issues between the Port and the Lummi Nation within this principle geographic scope. The Port and the Lummi Nation do not relinquish their rights to resolve issues with other parties, either private or public, in other forums.

#### **IV. FRAMEWORK PRINCIPLES**

The Parties agree that the principles set forth below will assist them in negotiating mutually agreeable implementation agreements.

- A. Use face-to-face meetings to identify, discuss, and attempt to resolve issues affecting and/or of interest to either Party;
- B. Continue building a relationship that is based on consistent contact, mutual respect, and constructive dialogue;
- C. Establish a process for coordination between the Parties prior to inception of projects, research studies, development, and resource management involving the Nation and the Port;
- D. Seek to achieve collective understandings, stability, certainty, and long-term cooperation between the Parties;
- E. Establish a method for sharing information at a technical level about proposed projects and operational changes involving the projects within the Bellingham Bay Shoreline Area;
- F. Work with the Lummi Nation to address any cultural resources and/or cultural practices affected by each project listed on Exhibit "B";
- G. Mitigate impacts to natural resources from projects listed on Exhibit "B" through sequential mitigation in compliance with the Mitigation Policy set forth in Exhibit "C";
- H. Understand, respect, and support each Party's processes for securing formal governmental approval from their respective governing authorities for this Agreement and all implementation agreements;
- I. Consistent with the Port's commitment to abide by the Washington Public Records Act and the Washington Open Meetings Act, in order to foster honest and frank discussion, face-to-face meeting contents shall remain confidential and will not be shared with individuals outside the respective governing authorities of the Parties;
- J. Any potential media announcements or discussions will be jointly agreed to by the Parties in advance to ensure that the sentiments expressed represent an accurate and balanced description of the subject matter involved. The Parties will discuss foreseeable public events or open public meetings where media may be present and/or where communications on the Parties' discussions may occur with other parties with the intent to avoid surprises if at all possible. Neither Party will make a statement characterizing the positions of the other Party to any media relating to the substantive issues under discussion. Statements to the media should be limited to acknowledgement that discussions are ongoing between the Parties with a view

towards reaching agreement on issues concerning the Bellingham Bay Shoreline Area, or other matters as may be appropriate; and

- K. All notices related to face-to-face meetings, this Agreement, or any implementation agreement shall be transmitted to the following, or their successors:

For the Lummi Nation:

Merle Jefferson, Executive Director  
Lummi Natural Resources Department  
2616 Kwina Road  
Bellingham, WA 98226-9298  
Tel: 360-384-2225  
Cell: 360-410-1706  
Fax: 360-384-4737  
E-mail: [merlej@lummi-nsn.gov](mailto:merlej@lummi-nsn.gov)

For the Port of Bellingham:

Fred Seeger, Interim Executive Director  
Port of Bellingham  
1801 Roeder Ave  
Bellingham, WA 98227-1677  
Tel: 360-676-2500  
Fax: 360-671-6411  
E-mail: [freds@portofbellinham.com](mailto:freds@portofbellinham.com)

## V. DISPUTE RESOLUTION

All disputes between the Parties relating to or arising from this Agreement, or any implementation agreement, shall be conducted as set forth herein:

- A. Whenever, during the term of this Agreement, any disagreement or dispute arises between the Parties as to the interpretation of this Agreement, or an implementation agreement, or any rights or obligation arising hereunder or thereunder, such matter shall be resolved whenever possible by the Parties first meeting in person and conferring in a good faith attempt to resolve the dispute through negotiations not later than ten (10) days after receipt of written notice describing the dispute, unless both Parties agree in writing to an extension of time;
- B. If the dispute is not resolved to the satisfaction of the Parties within thirty (30) days after the first meeting as set out in this section, then either Party may seek a resolution by arbitration in accordance with the procedures set forth herein. Any claim, controversy or dispute arising out of or relating to this Agreement, or any implementation agreement, shall be submitted to binding arbitration conducted by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA then in effect, and to the maximum extent applicable,

the Federal Arbitration Act (Title IX of the United States Code) will govern such arbitration without regard to any rule or provision which might be construed as a waiver of the Nation's sovereign immunity. Such arbitration shall be held in Bellingham or such other place as the Parties agree. The arbitrator shall be empowered to impose sanctions and take such other actions as he or she deems necessary to the same extent a judge could impose sanctions or take such other actions pursuant to the Federal Rules of Civil Procedure and applicable law. The arbitration shall be conducted subject to the Federal Rules of Evidence. Judgment on any arbitration award may be confirmed by and entered in the United States District Court for the Western District of Washington or in the event that such court has determined that it lacks jurisdiction, the courts of the State of Washington; provided, however, such award is consistent with this Agreement and the Nation's limited waiver of sovereign immunity. Appeal may be taken from a decision of such court regarding confirmation and/or enforcement of the decision in arbitration. Further, the mutual commitment by the Parties to resolve disputes through arbitration shall not prevent either Party from seeking injunctive relief to enforce arbitration and/or maintain the status quo pending resolution of the arbitration proceeding, through application to the federal District Court for the Western District of Washington; provided, however, that in the event such federal court declines jurisdiction over such claim for injunctive relief, such relief may be sought in the courts of the State of Washington, provided, however, such relief is consistent with this Agreement and the Nation's limited waiver of sovereign immunity;

- C. The arbitration shall be heard by a single arbitrator determined by the Parties. If the Parties cannot agree on an arbitrator, then the American Arbitration Association shall appoint one. The arbitrator should be a retired federal judge, if available. If not available, the arbitrator must be a licensed attorney or retired judge with some knowledge of federal Indian law and commercial transactions. The arbitrator must be unbiased and neutral;
- D. The arbitration hearing shall be conducted within ninety (90) days after an arbitrator is appointed. The decision of the arbitrator shall be final and binding upon the Parties, self-executory, and without further appeal or any judicial confirmation, recourse, or other process other than for confirmation and enforcement of the arbitration judgment. Each side shall bear its own costs, attorney's fees and one half of the costs and expenses of the arbitrator. The arbitration judgment shall be in writing and give reasons for the decision;
- E. Likewise, no causes of action or claims in law or equity are cognizable against the Port except actions against the Port itself for specific performance or injunctive relief arising out of this Agreement, or any implementation agreement. The Nation shall not bring any action arising from this Agreement, or any implementation agreement, against the Port's commissioners, employees, agents or attorneys;
- F. The Nation hereby grants a limited waiver of its sovereign immunity from suit solely for actions brought by the Port or its approved successor in interest (and no other person or entity) in binding arbitration. This limited waiver is to be strictly and

narrowly construed in favor of the Nation and may be enforced only under the conditions set forth herein. No causes of action or claims in law or equity are cognizable against the Nation except actions against the Nation itself for specific performance or injunctive relief arising out of this Agreement, or any implementation agreement. In the event the Port or its successors obtain a judgment or arbitration award as provided in this Article V and seeks to enforce such award, the Nation hereby agrees to submit to the jurisdiction of the state courts of Washington for the sole purpose of execution of the arbitration award of judgment. The Nation does not waive its sovereign immunity with respect to actions by third parties or disputes between the Nation and the Port not arising out of this Agreement or an implementation agreement. This limited waiver does not allow any actions to be brought against the tribal council, tribal officers, tribal attorneys, tribal employees, tribal agents, tribal members, or any other person or entity acting on behalf of the Nation. The Nation's limited waiver of sovereign immunity shall be further evidenced by a resolution from the Lummi Nation Indian Business Council, which shall also waive any requirement for exhaustion of tribal remedies and jurisdiction in the Lummi Nation Tribal Court;

- G. The Parties agree that any dispute resolution meetings or communications, arbitration proceedings, or agreements among the Parties settling or otherwise relating to any claims arising from or related to this Agreement or an implementation agreement shall be and remain confidential to the extent permitted by applicable law; and
- H. The Parties agree that during any kind of controversy, claim, disagreement or dispute, including a dispute as to the validity of this Agreement or an implementation agreement, the Parties shall continue to possess the rights, duties, and obligations set forth in this Agreement, and the Parties shall continue their performance of the provisions of this Agreement.

## **VI. AMENDMENT AND WAIVER**

This Agreement may not be amended, modified, or supplemented except by written agreement between the Parties. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision.

## **VII. GOVERNING LAW AND INTERPRETATION**

This Agreement shall be governed and construed in accordance with the laws of the State of Washington notwithstanding any choice of law provisions. This Agreement shall not be construed for or against any Party based on drafting or preparation. Captions in this Agreement are included for convenience only and in no way define or limit the meaning or intent of any provision herein.

## **VIII. PERSONS BOUND**

This Agreement shall bind and inure to the benefit of the Parties and their respective heirs, successors and assigns. Neither this Agreement nor any interest herein may be assigned without the prior written approval of the other Party. Such approval shall not be unreasonably withheld and be provided within thirty (30) days of a request without prior written consent to a longer period of time.

## **IX. NO WAIVER OF CLAIMS**

Georgia-Pacific, pursuant to its Purchase and Sale Agreement with the Port of Bellingham, retained all liability for Natural Resource Damage Assessment claims under Federal law. Nothing in this Agreement directly or indirectly impacts the current or future rights of the Lummi Nation or Port regarding any claims against Georgia-Pacific or any obligations the Port currently has under its agreement with Georgia-Pacific. Nothing in this Agreement creates any liability for the Parties for the liabilities and obligations of Georgia-Pacific.

## **X. FURTHER ASSURANCES**

Each Party agrees to do all acts and things and to make, execute, and deliver such written instruments as shall be reasonably necessary to carry out the terms and provisions of this Agreement, and all implementation agreements, and to implement the transactions contemplated herein and therein.

## **XI. SEVERABILITY**

In case any one or more of the provisions contained in this Agreement, or any implementation agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein and any other application thereof, shall not in any way be affected or impaired thereby.

## **XII. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter herein and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties to this Agreement with respect to the subject matter of this Agreement.

## **XIII. SIGNATURES AND AUTHORITY**

Each of the signatories below represents and warrants on behalf of the entity he purports to represent that he has been duly authorized to enter into and execute this Agreement and to commit to the performance of the obligations herein. This Agreement, and any subsequent implementation agreements, shall be approved by the Lummi Indian Business Council and the Port Commission.

#### XIV. NO THIRD PARTY BENEFICIARIES

This Agreement is exclusively for the benefit of the Parties hereto and may not be enforced by any party other than a Party hereto and shall not give rise to liability to any third party other than as provided herein.

#### XV. INDIVIDUAL RESPONSIBILITY

The rights, duties, obligations and liabilities of the Parties under this Agreement shall be individual, not joint or collective. It is not the intention of the Parties to create, nor shall this Agreement be deemed or construed to create, a partnership or a joint venture. This Agreement shall not be deemed or construed to authorize any Party to act as an agent, servant or employee for any other Party for any purpose whatsoever except as explicitly set forth in this Agreement or as mutually agreed in writing. In their relations with each other under this Agreement, the Parties shall not be considered fiduciaries except as expressly provided herein.

#### XVI. SIGNATURES

APPROVED by the Lummi Indian Business Council Resolution # 2009 - 121 (August 4, 2009).

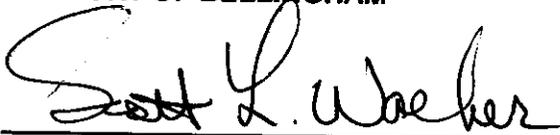
LUMMI NATION

  
Chairman

Date 8/4/09

ADOPTED by the Port of Bellingham in an open public meeting on the 4<sup>th</sup> day of August, 2009.

THE PORT OF BELLINGHAM

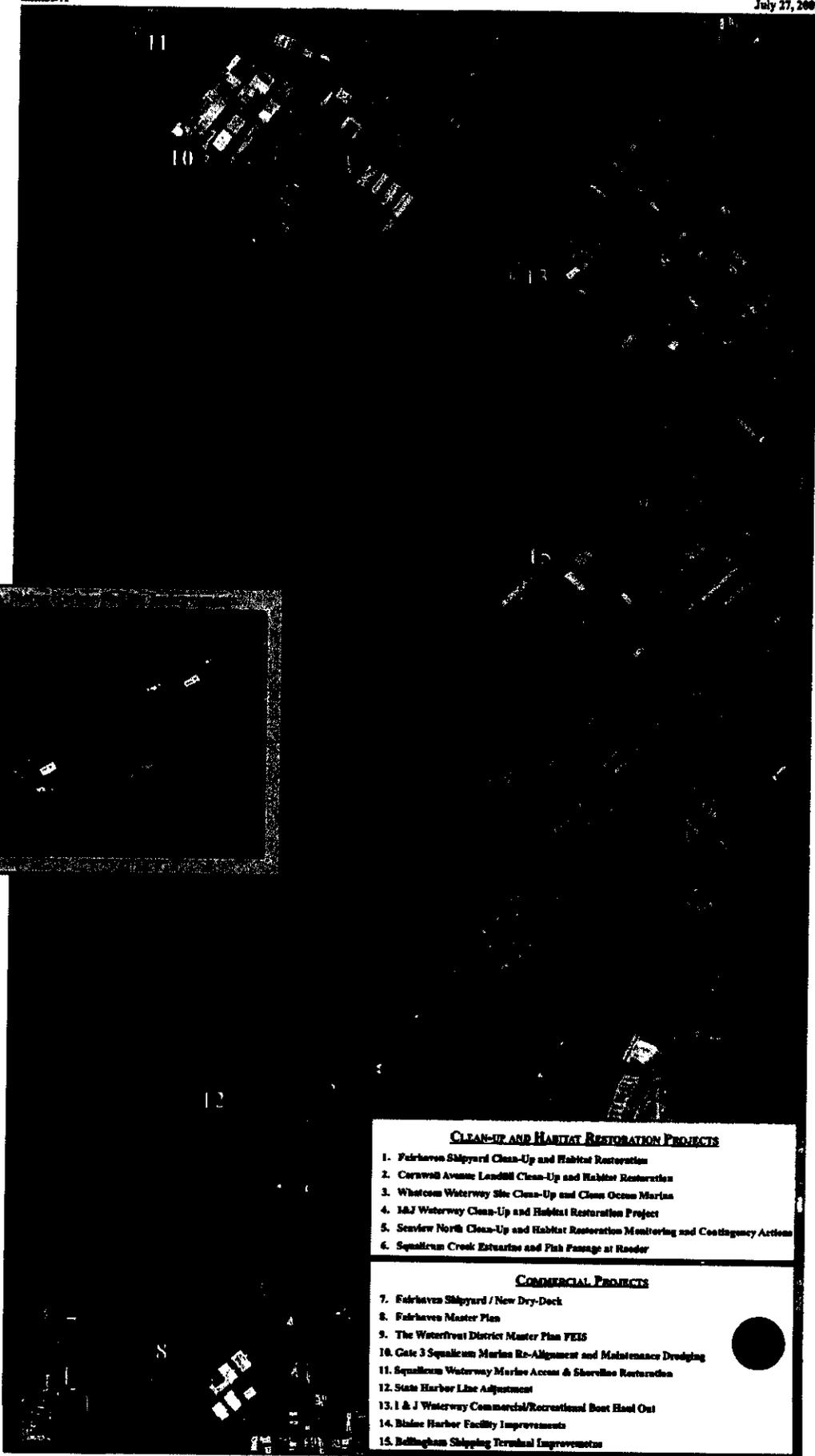
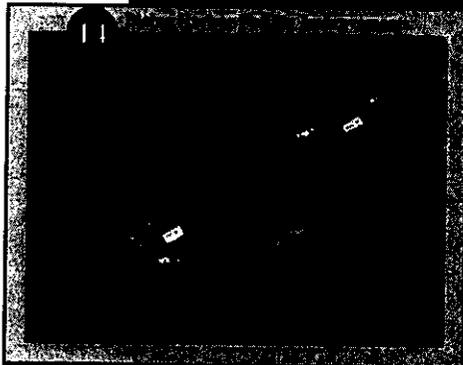


Scott L. Walker  
Commission President

Date 8-4-2009

**EXHIBIT "A"**

**MAP OF THE  
PROPOSED CLEAN-UP, HABITAT RESTORATION  
AND COMMERCIAL DEVELOPMENT PROJECTS**



- CLEAN-UP AND HABITAT RESTORATION PROJECTS**
1. Fairhaven Shipyard Clean-Up and Habitat Restoration
  2. Corwail Avenue Landfill Clean-Up and Habitat Restoration
  3. Whetcom Waterway Site Clean-Up and Class Ocean Marina
  4. M/J Waterway Clean-Up and Habitat Restoration Project
  5. Senview North Clean-Up and Habitat Restoration Monitoring and Contingency Action
  6. Squalicum Creek Estuarine and Fish Passage at Reader
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- COMMERCIAL PROJECTS**
7. Fairhaven Shipyard / New Dry-Deck
  8. Fairhaven Master Plan
  9. The Waterfront District Master Plan FEIS
  10. Gate 3 Squalicum Marine Re-Alignment and Maintenance Dredging
  11. Squalicum Waterway Marine Access & Shoreline Restoration
  12. State Harbor Line Adjustment
  13. I & J Waterway Commercial/Recreational Boat Haul Out
  14. Blaine Harbor Facility Improvements
  15. Bellingham Shipping Terminal Improvements

**EXHIBIT "B"**

**SUMMARIES AND FIGURES OF THE PROPOSED  
CLEAN-UP, HABITAT RESTORATION AND  
COMMERCIAL DEVELOPMENT PROJECTS**



**PORT OF BELLINGHAM**  
*Washington State*

**Exhibit B**

**July 27, 2009**

**Clean-up and Habitat Restoration Project Summaries and Figures**

- 1. Fairhaven Shipyard Clean-Up and Habitat Restoration (MTCA Site Name: Harris Avenue Shipyard)**
- 2. Cornwall Avenue Landfill Clean-Up and Habitat Restoration**
- 3. Whatcom Waterway Site Clean-Up and Clean Ocean Marina**
- 4. I&J Waterway**
- 5. Seaview North (former Weldcraft) Clean-Up and Habitat Restoration Monitoring and Contingency Actions**
- 6. Squalicum Creek Estuarine and Fish Passage at Roeder**

**Commercial Project Summaries and Figures**

- 7. Fairhaven Shipyard / New Dry-Dock**
- 8. Fairhaven Master Plan**
- 9. The Waterfront District Master Plan FEIS**
- 10. Gate 3 Squalicum Marina Re-Alignment and Maintenance Dredging**
- 11. Squalicum Waterway Marine Access & Shoreline Restoration**
- 12. State Harbor Line Adjustment**
- 13. I & J Waterway Commercial/Recreational Boat Haul Out**
- 14. Blaine Harbor Facility Improvements**
- 15. Bellingham Shipping Terminal Improvements**

## **Project Number 1: Fairhaven Shipyard Clean-Up and Habitat Restoration**

1. **Project Name:** *Fairhaven Shipyard Clean-Up and Habitat Restoration* (MTCA Site Name: Harris Avenue Shipyard)
2. **Project Description:** The Fairhaven Shipyard (a.k.a. Harris Avenue Shipyard site) Clean-Up and Habitat Restoration Project includes upland and aquatic sediment contamination caused by shipyard operations conducted between 1916 and 1994. The site includes approximately 3.9 acres of aquatic land and 11.1 acres of upland industrial property. A cleanup plan is being developed under Ecology oversight and, based on the data collected so far, the in-water cleanup technologies will include targeted dredging with upland disposal of contaminated aquatic sediments, limited areas of environmental capping and armoring of contaminated aquatic sediment in inaccessible areas, and long-term monitoring to ensure the effectiveness of the cleanup action. Upland cleanup activities will address soil and groundwater contamination.
3. **Habitat Restoration:** Consistent with the Bellingham Bay Comprehensive Strategy finalized in 2000, cleanup activities are anticipated to include a habitat restoration area.
4. **Project Status as of July 2009:**
  - A preliminary draft sediment Remedial Investigation/Feasibility Study (RI/FS) was developed by the Port under an Ecology Agreed Order in August 2004.
  - A combined sediment/upland RI/FS is being developed under an Ecology Agreed Order and is expected to be released for public review in 2010.
  - The Port anticipates submitting a Joint Aquatic Resources Protection Application (JARPA) for in-water cleanup and habitat restoration activities in 2011-12.
5. **Anticipated Impacts and Mitigation Measures:** Cleanup and habitat restoration activities are expected to be performed pursuant to authorizations obtained from numerous federal, state, and local permitting agencies including the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, National Marine Fisheries Service, United States Fish and Wildlife Service, Washington State Department of Ecology, Washington State Department of Natural Resources, Whatcom County, and/or the City of Bellingham with review by affected Tribes. The permitting process will involve an assessment of potential project impacts on a range of issues including: Tribal treaty rights, water resources, threatened and endangered species, finfish and shellfish habitat, historical/archeological resources, dredged material management, soils, air quality, cumulative effects, environmental justice, and other environmental impacts in accordance with the National Environmental Policy Act. It is anticipated that the Port will implement a range of mitigation measures including: effective spill prevention and response, storm water management, environmental remediation, habitat restoration, monitoring, and other associated corrective actions if needed.

It is also anticipated that Tribal cultural resources preservation and protection measures for this project will be developed in accordance with a Cultural Resources Preservation and Protection Plan for Port properties.

Specific anticipated impacts and mitigation measures include:

- **Dredging:** To comply with state cleanup standards, this project will include the dredging of contaminated aquatic sediments with upland disposal.

- ***Placement of Fill Material:*** To comply with state cleanup standards, an environmental cap will likely be placed on top of contaminated aquatic sediments in some areas. The habitat restoration component of this project might include the placement of fill to change the bottom elevation from subtidal to intertidal. Any loss of aquatic land will be minimized for this project with appropriate mitigation measures performed according to Exhibit C.
- ***Shoreline Armoring:*** To comply with state cleanup standards, shoreline armoring might be required. However, to the extent practicable as interpreted by federal agencies, soft-shore defense approaches and other actions that will increase suitable substrate for surf smelt, sand lance, and other forage fish will be utilized.
- ***Historic and Cultural Resources:*** The project is located within historic tidelands which have been previously disturbed by dredge and fill activities. However, the possibility of encountering historic and prehistoric artifacts exists. State and federal regulations for protection and management of cultural resources will be followed during implementation of this project including notification and consultation with the Lummi Nation Tribal Historic Preservation Office (LNTHPO) in accordance with federal law.
- ***Fishing Activity:*** Waters in the vicinity of the project are Treaty-protected “Usual and Accustomed” fishing areas. Fishing activity in this area is managed by the affected Tribes and the Washington Department of Fish and Wildlife. Cleanup activities will be limited to allowable in-water work windows to avoid and/or minimize impacts to migrating salmon.
- ***Dredge Material Management Program (DMMP):*** The Bellingham open water disposal site, authorized under the DMMP will not be used for the disposal of any dredged material originating from this project.
- ***Fishing Interference and Gear Loss Avoidance:*** In addition to the standard mitigation measures described above, the Port project manager will inform the Lummi Nation of proposed vessel traffic (i.e., vessel types, routes and schedules) during project construction and will make practicable adjustments to minimize interference with Lummi fishermen and to avoid gear loss during the construction phase.

*This project will be designed and permitted to meet state and federal cleanup standards for protection of human health and the environment. The project description includes the anticipated site activities however the project may need to be modified in order to meet Department of Ecology or federal agency cleanup requirements.*



## **Project Number 2: Cornwall Avenue Landfill Clean-Up and Habitat Restoration**

- 1. Project Name:** *Cornwall Avenue Landfill Clean-Up and Habitat Restoration*
- 2. Project Description:** The Cornwall Avenue Landfill Clean-Up and Habitat Restoration Project is approximately 16.5 acres in size, including about 3.5 acres of aquatic lands and 13 acres of uplands. Originally, the majority of the project site consisted of tide flats and subtidal areas of Bellingham Bay. The Site was used for the disposal of municipal solid waste from 1953-1965. A cleanup plan is currently being developed under Ecology oversight to address contaminated soils, aquatic sediments and groundwater. Based on the data collected to date, the cleanup will likely include shoreline stabilization, limited areas of aquatic sediment capping, infiltration control on top of the landfill, partial landfill gas control, and long-term monitoring to ensure the effectiveness of the cleanup action.
- 3. Habitat Restoration:** Consistent with the Bellingham Bay Comprehensive Strategy finalized in 2000, cleanup activities will likely include a habitat restoration area. Permanent containment of refuse along the shoreline is a fundamental requirement of the cleanup remedy, however soft bank technologies might be applicable in some areas to create more natural shoreline conditions with improved habitat value.
- 4. Project Status as of July 2009:**
  - The Port is developing a Remedial Investigation/Feasibility Study (RI/FS) for the Cornwall Avenue Landfill under an Ecology Agreed Order. The RI/FS is expected to be released for public review in 2009.
  - The Port expects to submit a Joint Aquatic Resources Protection Application (JARPA) for in-water cleanup and habitat restoration activities in 2011-12.
- 5. Anticipated Impacts and Mitigation Measures:** Cleanup and habitat restoration activities are expected to be performed pursuant to authorizations obtained from numerous federal, state, and local permitting agencies including the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, National Marine Fisheries Service, United States Fish and Wildlife Service, Washington State Department of Ecology, Washington State Department of Natural Resources, Whatcom County, and/or the City of Bellingham with review by affected Tribes. The permitting process will involve an assessment of potential project impacts on a range of issues including: Tribal treaty rights, water resources, threatened and endangered species, finfish and shellfish habitat, historical/archeological resources, dredged material management, soils, air quality, cumulative effects, environmental justice, and other environmental impacts in accordance with the National Environmental Policy Act. It is anticipated that the Port will implement a range of mitigation measures including: effective spill prevention and response, storm water management, environmental remediation, habitat restoration, monitoring, and other associated corrective actions if needed.

It is also anticipated that Tribal cultural resources preservation and protection measures for this project will be developed in accordance with a Cultural Resources Preservation and Protection Plan for Port properties.

Specific anticipated impacts and mitigation measures include:

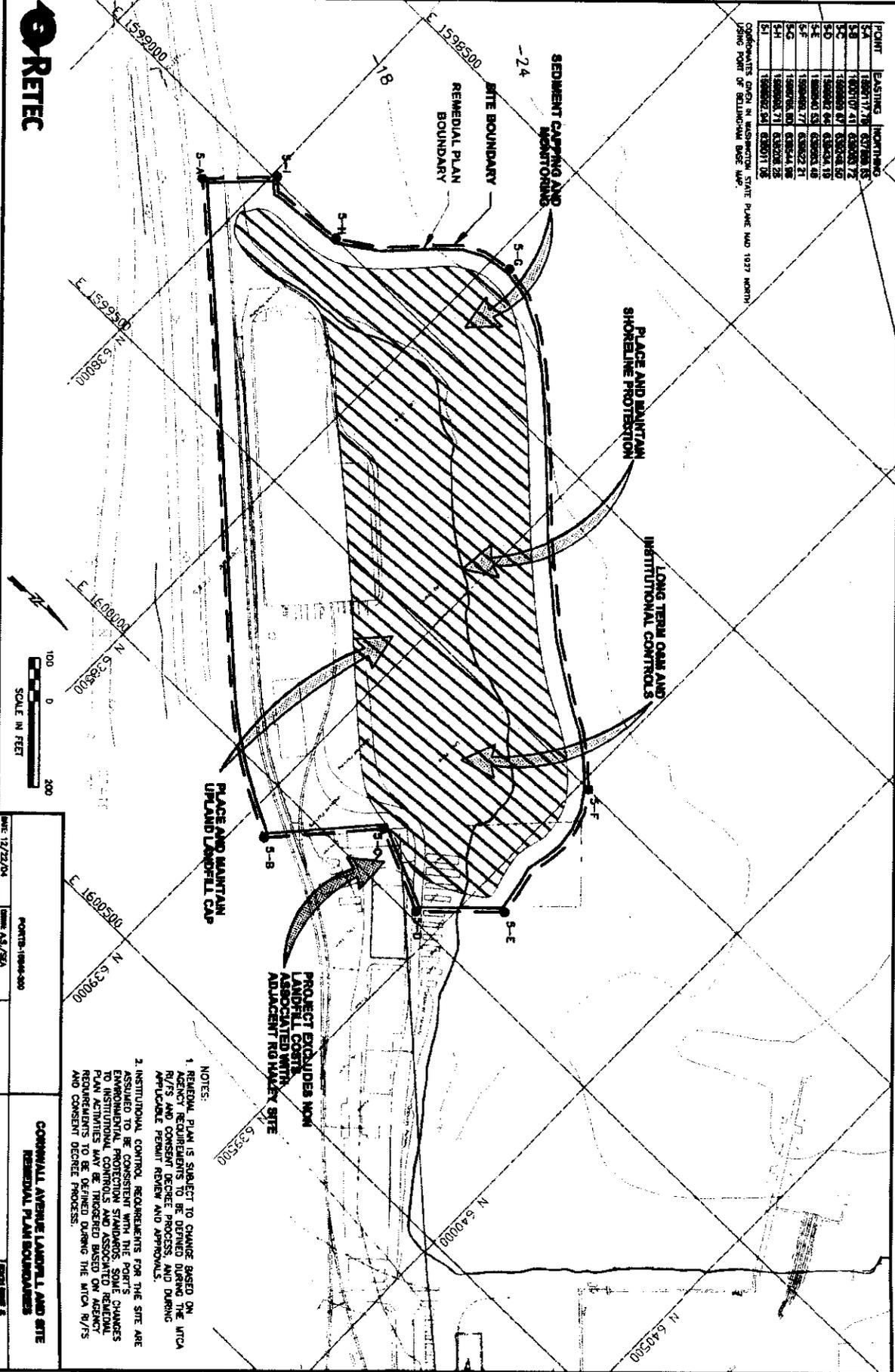
- ***Dredging:*** To comply with state cleanup standards, this project will include the dredging of contaminated aquatic sediments with upland disposal.
- ***Placement of Fill Material:*** To comply with state cleanup standards, an environmental cap will be placed on top of contaminated aquatic sediments in some areas. The habitat restoration component of this project might include the placement of fill along the shoreline to create more natural shoreline conditions with improved habitat value. Any loss of aquatic land will be minimized for this project with appropriate mitigation measures performed according to Exhibit C.
- ***Shoreline Armoring:*** To comply with state cleanup standards, shoreline armoring will be required to permanently contain the landfill refuse, protect the landfill against further wave erosion, and provide an environmental cap over contaminated aquatic sediments in the intertidal zone. However, to the extent practicable as interpreted by federal agencies, soft-shore defense approaches and other actions that will increase suitable substrate for surf smelt, sand lance, and other forage fish will be utilized.
- ***Historic and Cultural Resources:*** The project is located within historic tidelands which have been previously disturbed by dredge and fill activities. However, the possibility of encountering historic and prehistoric artifacts exists. State and federal regulations for protection and management of cultural resources will be followed during implementation of this project including notification and consultation with the Lummi Nation Tribal Historic Preservation Office (LNTHPO) in accordance with federal law.
- ***Fishing Activity:*** Waters in the vicinity of the project are Treaty-protected “Usual and Accustomed” fishing areas. Fishing activity in this area is managed by the affected Tribes and the Washington Department of Fish and Wildlife. Cleanup activities will be limited to allowable in-water work windows to avoid and/or minimize impacts to migrating salmon.
- ***Dredge Material Management Program (DMMP):*** The Bellingham open water disposal site, authorized under the DMMP will not be used for the disposal of any dredged material originating from this project.
- ***Fishing Interference and Gear Loss Avoidance:*** In addition to the standard mitigation measures described above, the Port project manager will inform the Lummi Nation of proposed vessel traffic (i.e., vessel types, routes and schedules) during project construction and will make practicable adjustments to minimize interference with Lummi fishermen and to avoid gear loss during the construction phase.

*This project will be designed and permitted to meet state and federal cleanup standards for protection of human health and the environment. The project description includes the anticipated site activities however the project may need to be modified in order to meet Department of Ecology or federal agency cleanup requirements.*



POINT	EASTING	NORTHING
S-4	188671.78	63768.78
S-8	188707.41	63808.72
S-2	188889.87	63824.16
S-3	188987.24	63824.16
S-4	189044.52	63824.16
S-5	189044.52	63824.16
S-6	189044.52	63824.16
S-7	189044.52	63824.16
S-8	189044.52	63824.16
S-9	189044.52	63824.16
S-10	189044.52	63824.16
S-11	189044.52	63824.16
S-12	189044.52	63824.16
S-13	189044.52	63824.16
S-14	189044.52	63824.16
S-15	189044.52	63824.16
S-16	189044.52	63824.16
S-17	189044.52	63824.16
S-18	189044.52	63824.16
S-19	189044.52	63824.16
S-20	189044.52	63824.16
S-21	189044.52	63824.16
S-22	189044.52	63824.16
S-23	189044.52	63824.16
S-24	189044.52	63824.16

COORDINATES GIVEN IN WASHINGTON STATE PLANE, NAD 1983 NORTH ZONE POINT OF BULLINGHAM BASE MAP



DATE: 12/22/04  
 PORTS-16846-00  
 DRAWN: A.S./SEA  
 CORNWALL AVENUE LANDFILL AND SITE  
 REMEDIAL PLAN BOUNDARIES  
 FIGURE 2

### **Project Number 3: Whatcom Waterway Site Clean-Up and Clean Ocean Marina**

1. **Project Name:** *Whatcom Waterway Site Clean-Up and Clean Ocean Marina*
2. **Project Description:** The Whatcom Waterway Site Clean-Up and Clean Ocean Marina Project includes more than 200 acres of aquatic land including Treaty-protected “Usual and Accustomed” fishing areas, a federal shipping channel, state harbor areas, and open water. The site also includes a 37-acre industrial wastewater treatment lagoon. The Whatcom Waterway Site Clean-Up and Clean Ocean Marina Project includes both short-term and long-term elements:

- a. **Short-Term Elements:** The Whatcom Waterway site cleanup plan includes the dredging and disposal of more than 530,000 cubic yards of contaminated marine sediment and wastewater sludge, capping in some areas of the site, shoreline stabilization, and long-term monitoring to ensure the effectiveness of the cleanup action. The cleanup of the wastewater treatment lagoon will support redevelopment of this facility into a new Clean Ocean Marina with approximately 350 boat slips and a mile of community access around the marina breakwater. Some of the surplus lagoon infrastructure (including wastewater conveyance piping under the Whatcom Waterway and an 8,000 foot outfall pipe into Bellingham Bay) are submerged under the mud line and will be left in place to minimize disturbance to the environment.

This project will be coordinated with short-term improvements in and around the Whatcom Waterway, which support the mixed-use redevelopment of the central waterfront. These improvements include the demolition of over-water structures, shoreline stabilization and enhancement, and improvements to the Bellingham Shipping Terminal to support continued deep-water uses including the potential relocation of NOAA’s Pacific Research Fleet (see cross reference at Project #15—Bellingham Shipping Terminal Improvements).

- b. **Long-Term Elements:** This project includes long-term improvements in and around the Whatcom Waterway, which support the mixed-use redevelopment of the central waterfront including the demolition of over-water structures, shoreline stabilization and enhancement, improvements to the Bellingham Shipping Terminal to support continued deep-water uses, a commercial/recreational boat launch on the north side of the Whatcom Waterway, and new mooring facilities and wave attenuators in the Whatcom Waterway. However, some of the long-term project elements might be expedited as part of the Joint Aquatic Resources Protection Application (JARPA) for in-water cleanup, redevelopment and habitat restoration activities in 2009.

3. **Habitat Restoration:** Consistent with the Bellingham Bay Comprehensive Strategy finalized in 2000, cleanup activities will include significant habitat restoration components including the creation of 4 acres of shallow habitat benches and the restoration of 2-3 miles of urban shorelines to support salmon recovery efforts.

#### **4. Project Status as of July 2009:**

- The Port signed a Consent Decree with Ecology in 2007 to implement a Cleanup Action Plan for the Whatcom Waterway cleanup site.
- The Port is developing an Engineering Design Report for the Whatcom Waterway cleanup under Ecology oversight, which is expected to be released for public review in 2009-10.

- The Port expects to submit a JARPA for in-water cleanup, redevelopment, and habitat restoration activities in 2009.
  - The Port expects to submit JARPA applications to implement long-term development projects in the Whatcom Waterway including new mooring facilities and wave attenuators before 2040.
5. **Anticipated Impacts and Mitigation Measures:** Cleanup and habitat restoration activities are expected to be performed pursuant to authorizations obtained from numerous federal, state, and local permitting agencies including the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, National Marine Fisheries Service, United States Fish and Wildlife Service, Washington State Department of Ecology, Washington State Department of Natural Resources, Whatcom County, and/or the City of Bellingham with review by affected Tribes. The permitting process will involve an assessment of potential project impacts on a range of issues including: Tribal treaty rights, water resources, threatened and endangered species, finfish and shellfish habitat, historical/archeological resources, dredged material management, soils, air quality, cumulative effects, environmental justice, and other environmental impacts in accordance with the National Environmental Policy Act. It is anticipated that the Port will implement a range of mitigation measures including: effective spill prevention and response, storm water management, environmental remediation, habitat restoration, monitoring, and other associated corrective actions if needed.

It is also anticipated that Tribal cultural resources preservation and protection measures for this project will be developed in accordance with a Cultural Resources Preservation and Protection Plan for Port properties.

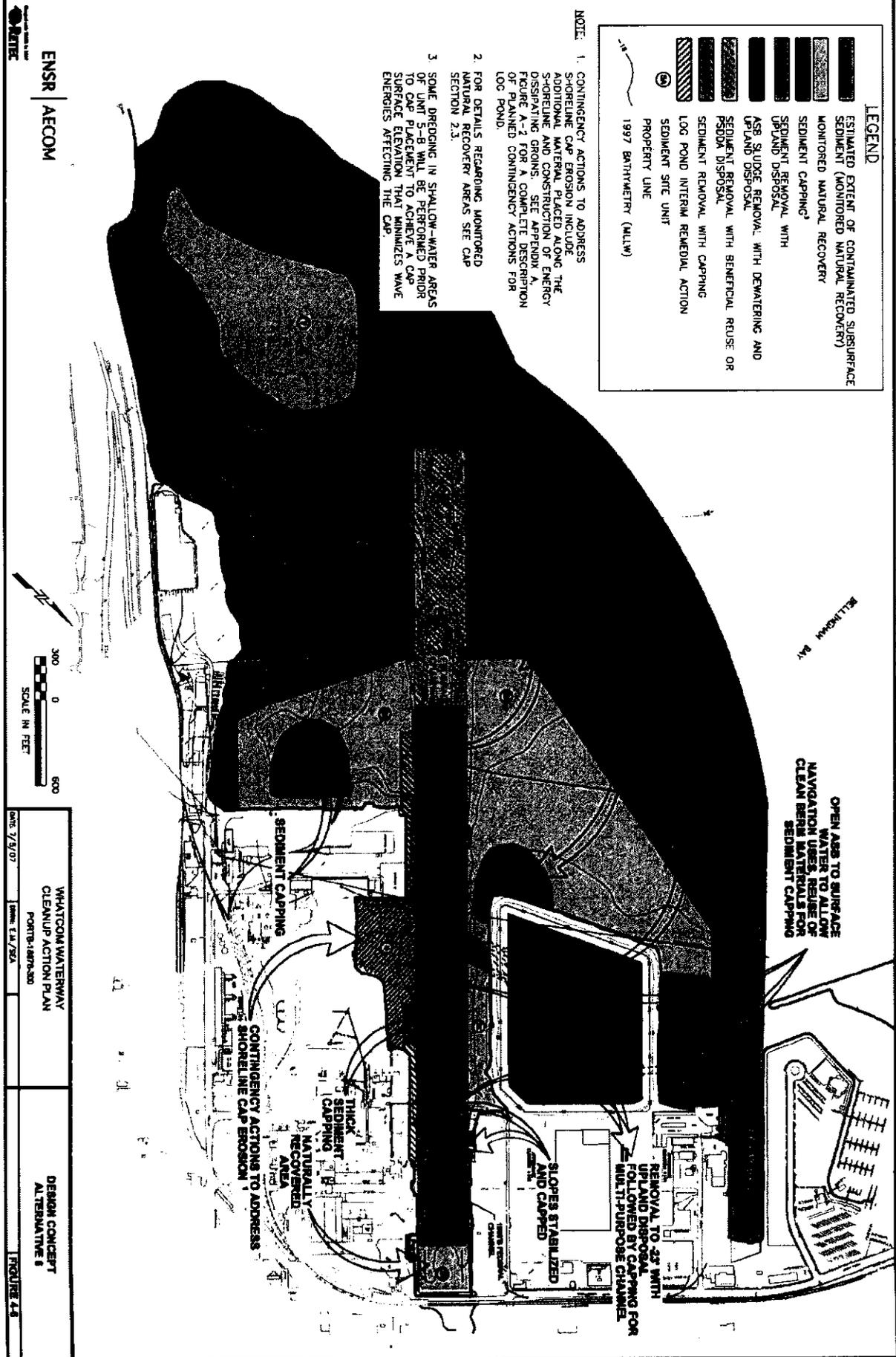
Specific anticipated impacts and mitigation measures include:

- *Dredging:* To comply with state cleanup standards, this project will include the dredging of contaminated sludges and aquatic sediments in and around the Whatcom Waterway and inside the wastewater treatment lagoon with upland disposal.
- *Placement of Fill Material:* To comply with state cleanup standards, an environmental cap will be placed on top of contaminated aquatic sediments in and around the Whatcom Waterway. Fill material will also be placed along the shoreline and to change some bottom elevations from subtidal to intertidal to support habitat restoration objectives. Any loss of aquatic land will be minimized for this project with appropriate mitigation measures performed according to Exhibit C.
- *Shoreline Armoring:* To comply with state cleanup standards, replacement or repair of shoreline armoring will be required in some areas to protect the cleanup remedy against wave erosion. However, to the extent practicable as interpreted by federal agencies, soft-shore defense approaches and other actions that will increase suitable substrate for surf smelt, sand lance, and other forage fish will be utilized.
- *Historic and Cultural Resources:* The project is located within historic tidelands which have been previously disturbed by dredge and fill activities. However, the possibility of encountering historic and prehistoric artifacts exists. State and federal regulations for protection and management of cultural resources will be followed during implementation of this project including notification and consultation with the Lummi Nation Tribal Historic Preservation Office (LNTHPO) in accordance with federal law.
- *Fishing Activity:* The majority of this project occurs within the Whatcom Waterway and the wastewater treatment lagoon. Waters in the vicinity of the project are Treaty-protected "Usual and Accustomed" fishing areas. Fishing activity in this area is managed by the

affected Tribes and the Washington Department of Fish and Wildlife. Cleanup activities will be limited to allowable in-water work windows to avoid and/or minimize impacts to migrating salmon.

- *Dredge Material Management Program (DMMP):* The Bellingham open water disposal site, authorized under the DMMP will not be used for the disposal of any dredged material originating from this project.
- *Fishing Interference and Gear Loss Avoidance:* In addition to the standard mitigation measures described above, the Port project manager will inform the Lummi Nation of proposed vessel traffic (i.e., vessel types, routes and schedules) during project construction and will make practicable adjustments to minimize interference with Lummi fishermen and to avoid gear loss during the construction phase.

*This project will be designed and permitted to meet state and federal cleanup standards for protection of human health and the environment. The project description includes the anticipated site activities however the project may need to be modified in order to meet Department of Ecology or federal agency cleanup requirements.*



**LEGEND**

- ESTIMATED EXTENT OF CONTAMINATED SUBSURFACE SEDIMENT (MONITORED NATURAL RECOVERY)
- MONITORED NATURAL RECOVERY
- SEDIMENT CAPPING
- SEDIMENT REMOVAL WITH BENEFICIAL REUSE OR UPLAND DISPOSAL
- ASB SLUDGE REMOVAL WITH DEWATERING AND UPLAND DISPOSAL
- SEDIMENT REMOVAL WITH BENEFICIAL REUSE OR PSDDA DISPOSAL
- SEDIMENT REMOVAL WITH CAPPING
- LOG POND INTERIM REMEDIAL ACTION
- SEDIMENT SITE UNIT
- PROPERTY LINE
- 1997 BATHYMETRY (MLW)

**NOTE:**

1. CONTINGENCY ACTIONS TO ADDRESS SHORELINE CAP EROSION INCLUDE:
  - a. ADDITIONAL AND CONSTRUCTION OF ENERGY DISSIPATING GROINS SEE APPENDIX A, FIGURE A-2 FOR A COMPLETE DESCRIPTION OF PLANNED CONTINGENCY ACTIONS FOR LOG POND.
2. FOR DETAILS REGARDING MONITORED NATURAL RECOVERY AREAS SEE CAP SECTION 2.3.
3. SOME DREDGING IN SHALLOW-WATER AREAS OF UNIT 5-B WILL BE PERFORMED PRIOR TO CAP PLACEMENT TO ACHIEVE A CAP SURFACE ELEVATION THAT MINIMIZES WAVE ENERGIES AFFECTING THE CAP.

ENSR | AECOM



WHATCOM WATERWAY  
CLEANUP ACTION PLAN  
PORTB-18876-300

DESIGN CONCEPT  
ALTERNATIVE 6  
FIGURE 4-6

The cleanup of the wastewater treatment lagoon will support the development of a Clean Ocean Marina with approximately 450 boat slips

Improvements to the Bellingham Shipping Terminal will support continued deep-water uses including the potential relocation of NOAA's Pacific Research Fleet

A commercial/recreational boat launch will support the Marine Trades Area

Long term improvements in the Whatcom Waterway will include wave attenuators and visitor moorage floats

Whatcom Waterway

Whatcom Waterway

### Whatcom Waterway Development Projects

## **Project Number 4: I&J Waterway Clean-Up and Habitat Restoration Project**

1. **Project Name:** *I&J Waterway Clean-Up and Habitat Restoration Project*
2. **Project Description:** The I&J Waterway Clean-Up and Habitat Restoration Project site includes approximately 15 acres of aquatic land including Treaty-protected "Usual and Accustomed" fishing areas and a federal navigation channel. Originally, the majority of the Site consisted of tide flats and subtidal areas of Bellingham Bay. The site has been used to support a number of historical industrial practices including lumber mills, rock crushing, and seafood processing. A cleanup plan is currently being developed under Ecology oversight to address contaminated marine sediments in the I&J Waterway and nearby berthing areas. Based on the data collected to date, the cleanup will likely include shoreline stabilization, dredging of contaminated aquatic sediments for upland or open-water disposal, limited areas of aquatic sediment capping, and long-term monitoring to ensure the effectiveness of the cleanup action.
3. **Habitat Restoration:** Consistent with the Bellingham Bay Comprehensive Strategy finalized in 2000, cleanup activities are anticipated to include a habitat restoration component.
4. **Project Status as of July 2009:**
  - The Port is developing a Remedial Investigation/Feasibility Study (RI/FS) for the I&J Waterway under an Ecology Agreed Order. The RI/FS is expected to be released for public review in 2012.
  - The Port expects to submit a Joint Aquatic Resources Protection Application (JARPA) for in-water cleanup and habitat restoration activities in 2013.
5. **Anticipated Impacts and Mitigation Measures:** Cleanup and habitat restoration activities are expected to be performed pursuant to authorizations obtained from numerous federal, state, and local permitting agencies including the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, National Marine Fisheries Service, United States Fish and Wildlife Service, Washington State Department of Ecology, Washington State Department of Natural Resources, Whatcom County, and/or the City of Bellingham with review by affected Tribes. The permitting process will involve an assessment of potential project impacts on a range of issues including: Tribal treaty rights, water resources, threatened and endangered species, finfish and shellfish habitat, historical/archeological resources, dredged material management, soils, air quality, cumulative effects, environmental justice, and other environmental impacts in accordance with the National Environmental Policy Act. It is anticipated that the Port will implement a range of mitigation measures including: effective spill prevention and response, storm water management, environmental remediation, habitat restoration, monitoring, and other associated corrective actions if needed.

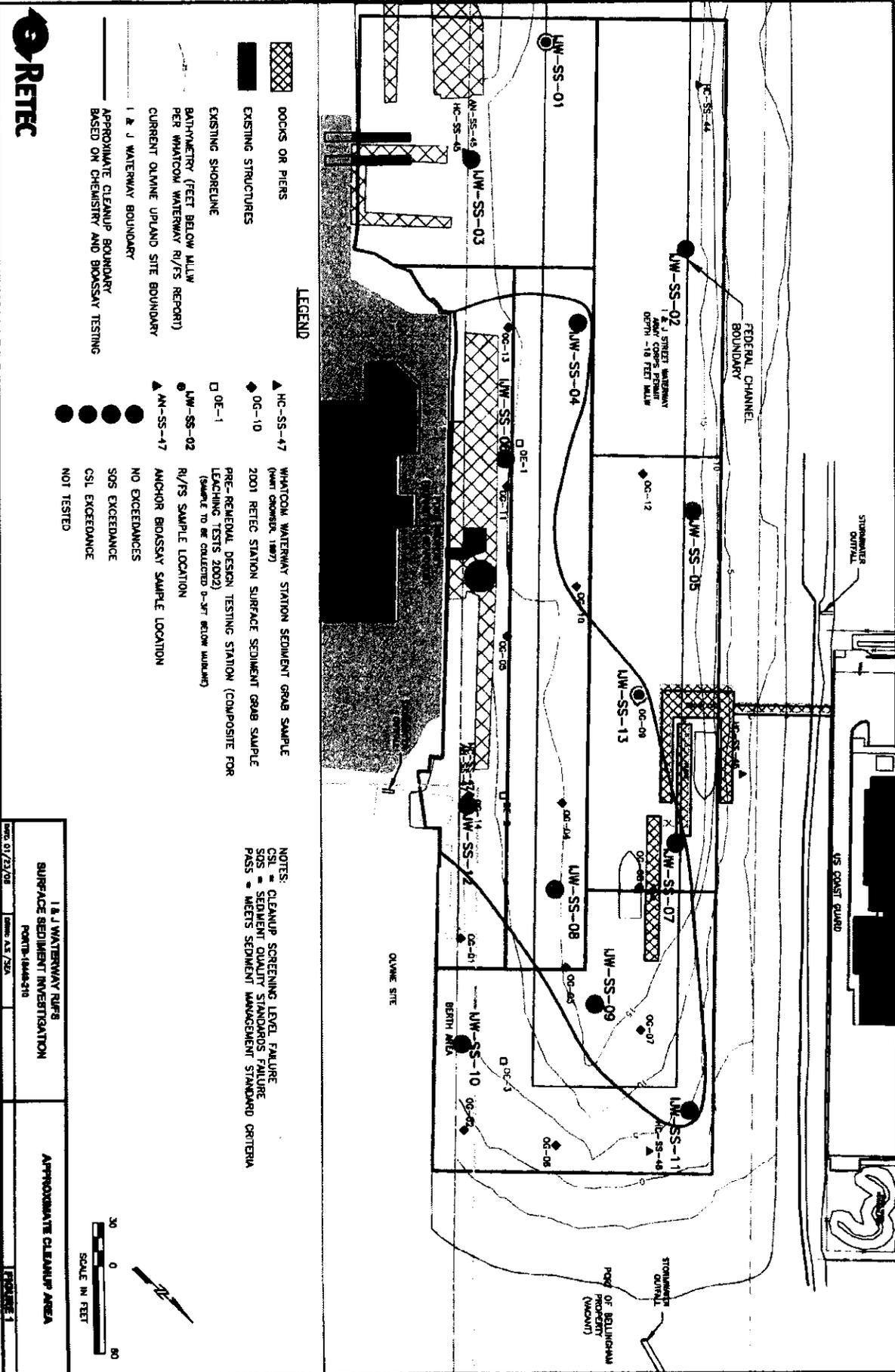
It is also anticipated that Tribal cultural resources preservation and protection measures for this project will be developed in accordance with a Cultural Resources Preservation and Protection Plan for Port properties.

Specific anticipated impacts and mitigation measures include:

- *Dredging:* To comply with state cleanup standards, this project will include the dredging of contaminated aquatic sediments with upland or open-water disposal.

- **Placement of Fill Material:** To comply with state cleanup standards, an environmental cap will likely be placed on top of contaminated aquatic sediments in some areas. The habitat restoration component of this project might include the placement of fill along the shoreline to create more natural shoreline conditions with improved habitat value. Any loss of aquatic land will be minimized for this project with appropriate mitigation measures performed according to Exhibit C.
- **Shoreline Armoring:** To comply with state cleanup standards, shoreline armoring repair or replacement might be required in some areas to protect the integrity of the cleanup remedy. However, to the extent practicable as interpreted by federal agencies, soft-shore defense approaches and other actions that will increase suitable substrate for surf smelt, sand lance, and other forage fish will be utilized.
- **Historic and Cultural Resources:** The project is located within historic tidelands which have been previously disturbed by dredge and fill activities. However, the possibility of encountering historic and prehistoric artifacts exists. State and federal regulations for protection and management of cultural resources will be followed during implementation of this project including notification and consultation with the Lummi Nation Tribal Historic Preservation Office (LNTHPO) in accordance with federal law.
- **Fishing Activity:** Waters in the vicinity of the project are Treaty-protected "Usual and Accustomed" fishing areas. Fishing activity in this area is managed by the affected Tribes and the Washington Department of Fish and Wildlife. Cleanup activities will be limited to allowable in-water work windows to avoid and/or minimize impacts to migrating salmon.
- **Dredge Material Management Program (DMMP):** The Bellingham open water disposal site, authorized under the DMMP will not be used for the disposal of any dredged material originating from this project.
- **Fishing Interference and Gear Loss Avoidance:** In addition to the standard mitigation measures described above, the Port project manager will inform the Lummi Nation of proposed vessel traffic (i.e., vessel types, routes and schedules) during project construction and will make practicable adjustments to minimize interference with Lummi fishermen and to avoid gear loss during the construction phase.

*This project will be designed and permitted to meet state and federal cleanup standards for protection of human health and the environment. The project description includes the anticipated site activities however the project may need to be modified in order to meet Department of Ecology or federal agency cleanup requirements.*



## **Project Number 5: Seaview North (former Weldcraft) Clean-Up and Habitat Restoration Monitoring and Contingency Actions**

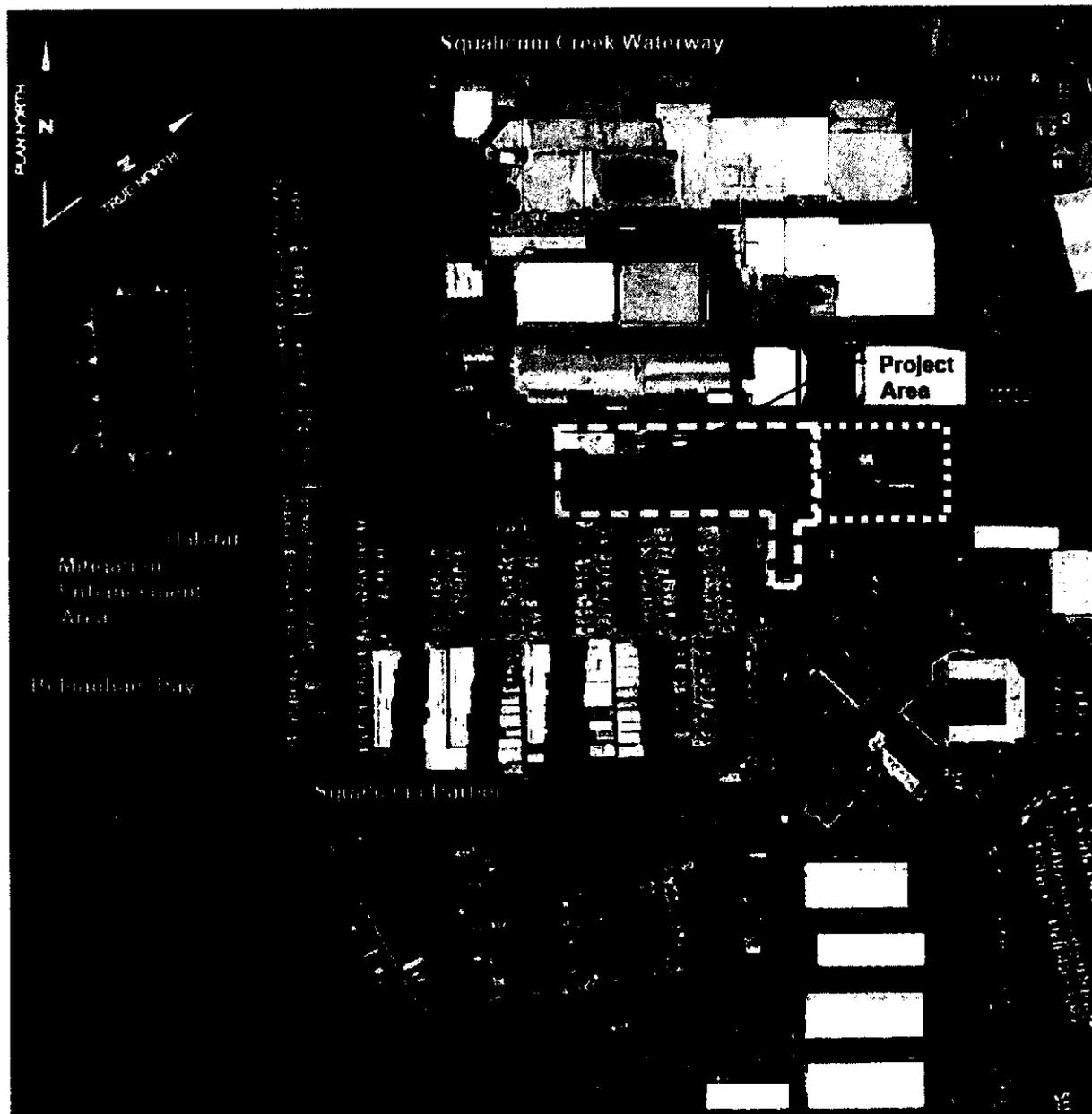
- 1. Project Name:** *Seaview North (former Weldcraft) Clean-Up and Habitat Restoration Monitoring and Contingency Actions*
- 2. Project Description:** The Seaview North Clean-Up and Habitat Restoration Project is entirely within Squalicum Harbor. In 2004, an interim cleanup action was completed at the former Weldcraft boyard under Department of Ecology oversight to Clean-Up contaminated aquatic sediments, implement boyard repairs and improvements, and provide significant new marine habitat along the Squalicum breakwater by beneficially reusing dredged material from maintenance dredging of the Squalicum Creek Waterway. A final cleanup plan is currently being developed to address upland soil and groundwater contamination, and to coordinate cleanup efforts along the shoreline and aquatic sediments. Based on the data collected to date, the cleanup plan will likely include shoreline stabilization, groundwater treatment, removal of contaminated soils, stormwater management, and long-term monitoring to ensure the effectiveness of the cleanup action. The habitat restoration bench will continue to be monitored and enhanced as part of this project.
- 3. Habitat Restoration:** Consistent with the Bellingham Bay Comprehensive Strategy finalized in 2000, cleanup activities completed to date at the Seaview North boyard have included a habitat restoration component. In 2004, a marine habitat bench was built along the Squalicum breakwater, which supplied over one-acre of marine habitat beyond compensation requirements in order to help meet bay-wide restoration and enhancement objectives. Site improvements included the removal of dilapidated structures, the remediation of 8,000 cubic yards of contaminated aquatic sediment, and the removal of 215 creosote-treated pilings and about 9,000 ft<sup>2</sup> of creosote-treated timbers from the marine environment.
- 4. Project Status as of July 2009:**
  - The Port is developing a Remedial Investigation/Feasibility Study (RI/FS) under an Ecology Agreed Order. The RI/FS is expected to be released for public review in 2010.
  - The Port expects to submit a Joint Aquatic Resources Protection Application (JARPA) for in-water cleanup activities in 2012.
- 5. Anticipated Impacts and Mitigation Measures:** Cleanup and habitat restoration activities are expected to be performed pursuant to authorizations obtained from numerous federal, state, and local permitting agencies including the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, National Marine Fisheries Service, United States Fish and Wildlife Service, Washington State Department of Ecology, Washington State Department of Natural Resources, Whatcom County, and/or the City of Bellingham with review by affected Tribes. The permitting process will involve an assessment of potential project impacts on a range of issues including: Tribal treaty rights, water resources, threatened and endangered species, finfish and shellfish habitat, historical/archeological resources, dredged material management, soils, air quality, cumulative effects, environmental justice, and other environmental impacts in accordance with the National Environmental Policy Act. It is anticipated that the Port will implement a range of mitigation measures including: effective spill prevention and response, storm water management, environmental remediation, habitat restoration, monitoring, and other associated corrective actions if needed.

It is also anticipated that Tribal cultural resources preservation and protection measures for this project will be developed in accordance with a Cultural Resources Preservation and Protection Plan for Port properties.

Specific anticipated impacts and mitigation measures include:

- **Dredging:** To comply with state cleanup standards, this project might include additional dredging of contaminated aquatic sediments with upland or open-water disposal.
- **Placement of Fill Material:** To comply with state cleanup standards, an environmental cap might be placed on top of contaminated aquatic sediments in some areas. Additional fill might be placed on the Squalicum breakwater to enhance the habitat restoration component of this project. Any loss of aquatic land will be minimized for this project with appropriate mitigation measures performed according to Exhibit C.
- **Shoreline Armoring:** To comply with state cleanup standards, shoreline armoring might be required in some areas to protect the integrity of the cleanup remedy. However, to the extent practicable as interpreted by federal agencies, soft-shore defense approaches and other actions that will increase suitable substrate for surf smelt, sand lance, and other forage fish will be utilized.
- **Historic and Cultural Resources:** The project is located within historic tidelands which have been previously disturbed by dredge and fill activities. However, the possibility of encountering historic and prehistoric artifacts exists. State and federal regulations for protection and management of cultural resources will be followed during implementation of this project including notification and consultation with the Lummi Nation Tribal Historic Preservation Office (LNTHPO) in accordance with federal law.
- **Fishing Activity:** This work is entirely within the existing Squalicum Harbor. Waters in the vicinity of the project outside of the marina are Treaty-protected "Usual and Accustomed" fishing areas. Fishing activity in this area is managed by the affected Tribes and the Washington Department of Fish and Wildlife. Cleanup activities will be limited to allowable in-water work windows to avoid and/or minimize impacts to migrating salmon.
- **Dredge Material Management Program (DMMP):** The Bellingham open water disposal site, authorized under the DMMP will not be used for the disposal of any dredged material originating from this project.
- **Fishing Interference and Gear Loss Avoidance:** In addition to the standard mitigation measures described above, the Port project manager will inform the Lummi Nation of proposed vessel traffic (i.e., vessel types, routes and schedules) during project construction and will make practicable adjustments to minimize interference with Lummi fishermen and to avoid gear loss during the construction phase.

*This project will be designed and permitted to meet state and federal cleanup standards for protection of human health and the environment. The project description includes the anticipated site activities however the project may need to be modified in order to meet Department of Ecology or federal agency cleanup requirements.*



Site: Gate 2 Boatyard, Squalicum Harbor  
 Port of Bellingham  
 (Former Weldcraft Steel & Marine Site)

Latitude: 48° 45' 47"  
 Longitude: 122° 30' 36"

Address: 2852 Harbor Loop Drive  
 (Intersection Squalicum Way and  
 Harbor Loop Drive)  
 Bellingham, Washington 98225



Port of Bellingham  
 Gate 2 Boatyard  
 Bellingham, Washington

Project Area  
 Site Map

Figure  
 2

## **Project Number 6: Squalicum Creek Estuarine and Fish Passage at Roeder**

1. **Project Name:** *Squalicum Creek Estuarine and Fish Passage at Roeder*
2. **Project Description:** The Squalicum Creek Estuarine and Fish Passage at Roeder Project will remove a fish passage barrier at the mouth of Squalicum Creek and enhance approximately 2.5 acres of habitat in the Squalicum Creek estuary for out-migrating juvenile salmon from the Nooksack River and Squalicum Creek. The fish passage barrier will be addressed by removing the 325-foot concrete lined channel between the Roeder Avenue bridge and the Burlington Northern Santa Fe (BNSF) railroad bridge and replacing it with a natural streambed. Below the BNSF railroad bridge, estuary restoration efforts will create shallow water rearing habitat and suitable conditions for eelgrass beds and forage fish spawning, establish 3,780-square feet of salt marsh habitat, and construct 660-feet of riparian shrub habitat.
3. **Habitat Restoration:** This project is a high priority Bellingham Bay Demonstration Pilot habitat restoration project. The project objectives will complement the Washington State Department of Natural Resources recent removal of derelict creosote structures in the Squalicum Creek estuary including a 475 foot long pier with over 13,000 square feet of overwater surface area, 320 creosote-treated pilings and 360 additional pilings from dolphins and an old marine rail line.
4. **Project Status as of July 2009:**
  - The Port is developing design and engineering plans and expects to complete this phase of the project in 2010.
  - The Port expects to submit a Joint Aquatic Resources Protection Application (JARPA) for in-water habitat restoration activities in 2012.
5. **Anticipated Impacts and Mitigation Measures:** Cleanup and habitat restoration activities are expected to be performed pursuant to authorizations obtained from numerous federal, state, and local permitting agencies including the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, National Marine Fisheries Service, United States Fish and Wildlife Service, Washington State Department of Ecology, Washington State Department of Natural Resources, Whatcom County, and/or the City of Bellingham with review by affected Tribes. The permitting process will involve an assessment of potential project impacts on a range of issues including: Tribal treaty rights, water resources, threatened and endangered species, finfish and shellfish habitat, historical/archeological resources, dredged material management, soils, air quality, cumulative effects, environmental justice, and other environmental impacts in accordance with the National Environmental Policy Act. It is anticipated that the Port will implement a range of mitigation measures including: effective spill prevention and response, storm water management, environmental remediation, habitat restoration, monitoring, and other associated corrective actions if needed.

It is also anticipated that Tribal cultural resources preservation and protection measures for this project will be developed in accordance with a Cultural Resources Preservation and Protection Plan for Port properties.

Specific anticipated impacts and mitigation measures include:

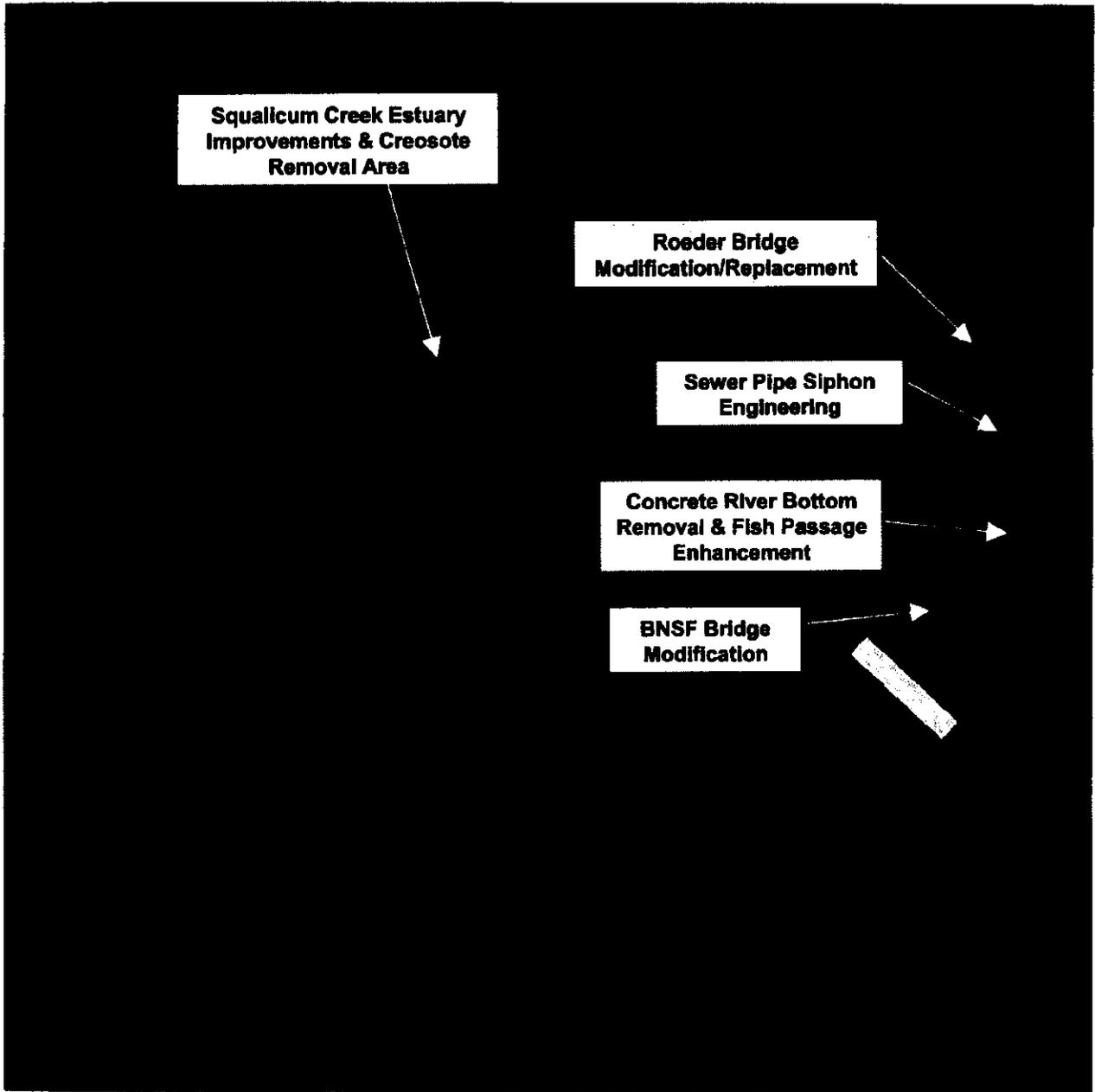
- *Dredging:* This project will be coordinated with regular maintenance dredging of the Squalicum Waterway which will be permitted independently by the Army Corp of

Engineers. The maintenance dredge material will be beneficially reused in the Squalicum estuary to support habitat restoration objectives.

- **Placement of Fill Material:** This project will place approximately 9,200 cubic yards of clean dredged material from the Squalicum Waterway maintenance dredging into the Squalicum Creek estuary to support habitat restoration objectives. Any loss of aquatic land will be minimized for this project with appropriate mitigation measures performed according to Exhibit C.
- **Shoreline Armoring:** This project will replace some of the riprap shoreline armoring in the Squalicum Creek estuary with riparian vegetation to support habitat restoration objectives. To the extent practicable as interpreted by federal agencies, soft-shore defense approaches and other actions that will increase suitable substrate for surf smelt, sand lance, and other forage fish will be utilized.
- **Historic and Cultural Resources:** The project is located within historic tidelands which have been previously disturbed by dredge and fill activities. However, the possibility of encountering historic and prehistoric artifacts exists. State and federal regulations for protection and management of cultural resources will be followed during implementation of this project including notification and consultation with the Lummi Nation Tribal Historic Preservation Office (LNTHPO) in accordance with federal law.
- **Fishing Activity:** Waters in the vicinity of the project are Treaty-protected "Usual and Accustomed" fishing areas. Fishing activity in this area is managed by the affected Tribes and the Washington Department of Fish and Wildlife. Habitat restoration activities will be limited to allowable in-water work windows to avoid and/or minimize impacts to migrating salmon.
- **Dredge Material Management Program (DMMP):** The Bellingham open water disposal site, authorized under the DMMP will not be used for the disposal of any dredged material originating from this project.
- **Fishing Interference and Gear Loss Avoidance:** In addition to the standard mitigation measures described above, the Port project manager will inform the Lummi Nation of proposed vessel traffic (i.e., vessel types, routes and schedules) during project construction and will make practicable adjustments to minimize interference with Lummi fishermen and to avoid gear loss during the construction phase.

*The project description includes the anticipated site activities to meet habitat restoration objectives in the Squalicum Creek estuary. The project may be modified to achieve additional habitat benefits.*

# Squalicum Creek Fish Passage & Estuary Restoration



**Legend**

◆ Salvaged Driftwood	<b>Restoration</b>	<b>Bridges</b>
□ Project Site	▨ Beach Backshore	<b>Name</b>
■ Street	<b>Vegetation Type</b>	■ Railroad
	■ Riparian	■ Roeder
	■ Saltmarsh	— Truck

0 62.5 125 250 Feet



Map of restoration areas for Proposed Action

## **Project Number 7: Fairhaven Shipyard / New Dry-Dock**

- 1. Project Name:** *Fairhaven Shipyard / New Dry-Dock*
- 2. Project Description:** The Fairhaven Shipyard / New Dry-Dock Project includes both short-term and long-term elements:
  - a. Short-Term Elements:** In September 2009, Fairhaven Shipyard will install a submersible barge to an existing pier at the Fairhaven Shipyard. This dry-dock does not require any moorage pilings or anchors and can be towed to other locations to transport vessels in need of repair to the Fairhaven Shipyards facility. The submersible barge has a control tower at the aft end and two crane-towers on each side of the bow. The vessel also includes a contained storm and wastewater treatment system with a capacity of approximately 1.9 million gallons. The new dry-dock is 50 feet high, 492 feet long, 132 feet wide, and has a displacement capacity of 37,000 tons. The semi-submersible dry-dock will typically repair and maintain Alaska and Washington State ferries, Coast Guard Cutters, NOAA vessels, and barges. Additional short-term elements may include maintenance, repair, and/or replacement of the existing pier.
  - b. Long-Term Elements:** Long-term improvements at the Fairhaven Shipyard will include relocation of the submersible barge to be moored perpendicular to the existing pier, including potential maintenance, repair, and/or replacement of the existing pier. The new dry-dock location will include new mooring dolphins, mooring chains and anchors, an access ramp and platform. To accommodate the new dry-dock location, it is proposed to move a portion of the outer harbor line waterward approximately 600 feet.
- 3. Habitat Restoration:** No habitat restoration activities are planned as part of this project.
- 4. Project Status as of July 2009:**
  - The Port expects the tenant to submit an amended Joint Aquatic Resources Application (JARPA) for the amended alignment shown on the attached diagram. The submersible barge with the modified footprint is anticipated to be installed in September 2009.
  - The Port expects to submit a JARPA to install a new, larger dry-dock at the Fairhaven Shipyard before 2035.
- 5. Anticipated Impacts and Mitigation Measures:** In-water construction activities are expected to be performed pursuant to authorizations obtained from numerous federal, state, and local permitting agencies including the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, National Marine Fisheries Service, United States Fish and Wildlife Service, Washington State Department of Ecology, Washington State Department of Natural Resources, Whatcom County, and/or the City of Bellingham with review by affected Tribes. The permitting process will involve an assessment of potential project impacts on a range of issues including: Tribal treaty rights, water resources, threatened and endangered species, finfish and shellfish habitat, historical/archeological resources, dredged material management, soils, air quality, cumulative effects, environmental justice, and other environmental impacts in accordance with the National Environmental Policy Act. It is anticipated that the Port will implement a range of mitigation measures including: effective spill prevention and response, storm water management, environmental remediation, habitat restoration, monitoring, and other associated corrective actions

if needed.

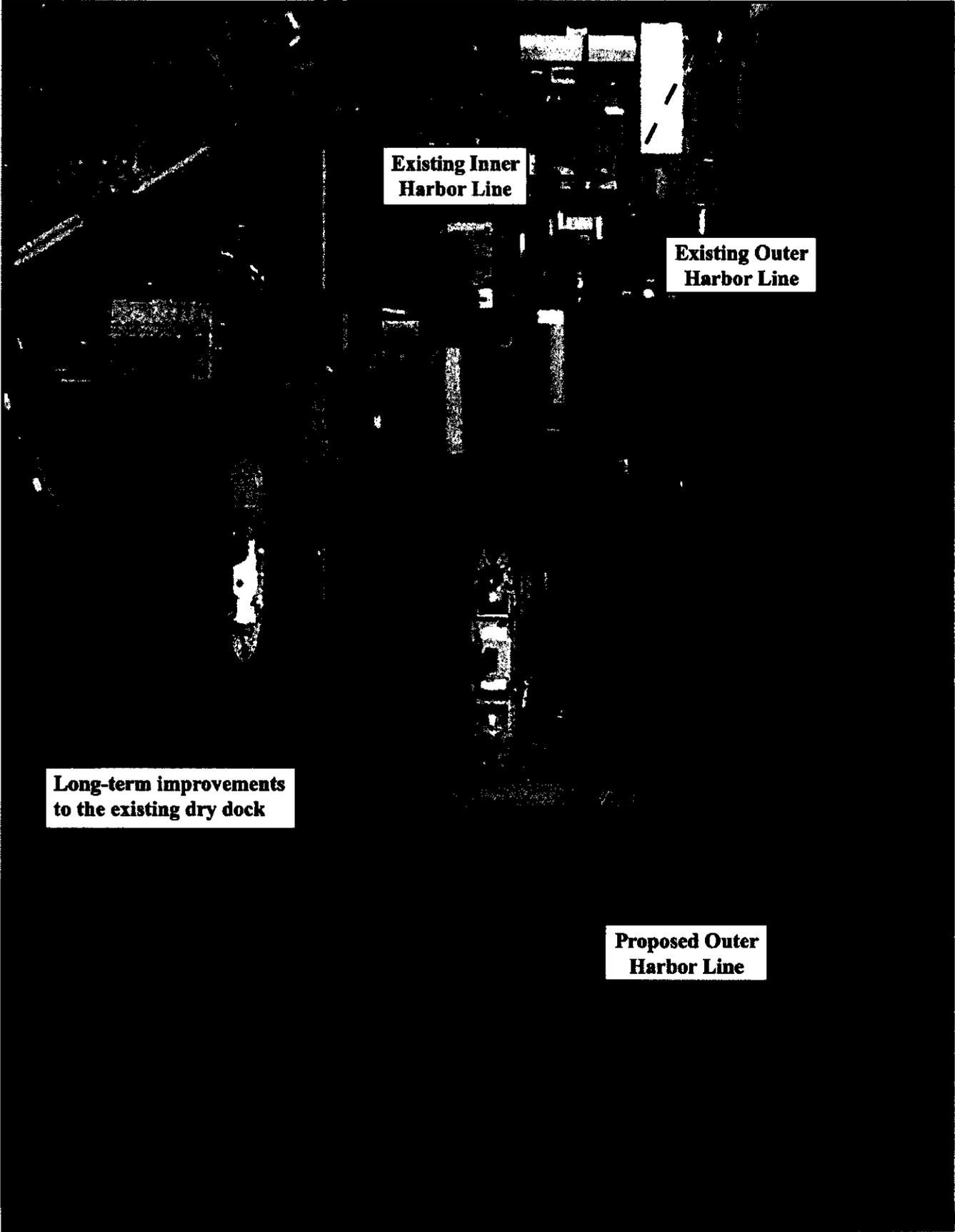
It is also anticipated that Tribal cultural resources preservation and protection measures for this project will be developed in accordance with a Cultural Resources Preservation and Protection Plan for Port properties.

Specific anticipated impacts and mitigation measures include:

- *Dredging:* A limited amount of dredging will be required to support long-term plans to install a new dry-dock.
- *Ballast Water Management:* The Port will ensure that any ballast water originating outside of Bellingham Bay that is used in the operation of the dry dock is either treated to eliminate the presence of potentially invasive plant and animal species prior to discharge or is discharged at an open ocean location.
- *Placement of Fill Material:* A limited amount of fill material may be required to support long-term plans to build the new dry-dock. Any loss of aquatic land will be minimized for this project with appropriate mitigation measures performed according to Exhibit C.
- *Shoreline Armoring:* A limited amount of shoreline armoring repair may be required to support long-term plans to build a new dry-dock. However, to the extent practicable as interpreted by federal agencies, soft-shore defense approaches and other actions that will increase suitable substrate for surf smelt, sand lance, and other forage fish will be utilized.
- *Historic and Cultural Resources:* The project is located within historic tidelands which have been previously disturbed by dredge and fill activities. However, the possibility of encountering historic and prehistoric artifacts exists. State and federal regulations for protection and management of cultural resources will be followed during implementation of this project including notification and consultation with the Lummi Nation Tribal Historic Preservation Office (LNTHPO) in accordance with federal law.
- *Fishing Interference and Gear Loss Avoidance:* In addition to the standard mitigation measures described above, the Port project manager will inform the Lummi Nation of proposed vessel traffic (i.e., vessel types, routes and schedules) during project construction and will make practicable adjustments to minimize interference with Lummi fishermen and to avoid gear loss during the construction phase. The Port will facilitate a meeting with representatives from the Port, Lummi Nation, and the Port's tenants to exchange information on tribal fishing activities and facility operations to determine practicable traffic corridors and schedules that would minimize interference between vessels using the facility and tribal fishers.
- *Fishing Activity:* Waters in the vicinity of the project are Treaty-protected "Usual and Accustomed" fishing areas. Fishing activity in this area is managed by the affected Tribes and the Washington Department of Fish and Wildlife. Construction activities will be limited to allowable in-water work windows to avoid and/or minimize impacts to migrating salmon.
- *Dredge Material Management Program (DMMP):* The Bellingham open water disposal site, authorized under the DMMP will not be used for the disposal of any dredged material originating from this project.

*The project description includes the likely maximum impacts. The project could be modified at the Port's discretion to reduce this range of impacts.*





**Fairhaven Shipyard / New Dry-Dock -- Long Term Improvements**

## **Project Number 8: Fairhaven Master Plan**

1. **Project Name:** *Fairhaven Master Plan*
2. **Project Description:** The Fairhaven Master Plan Project includes improvements to the Fairhaven public boat launch and maintenance to the existing water-dependent haul out dock in Fairhaven Marine Industrial Park. The Fairhaven public boat launch is located in shallow water and is not usable at low tides. Improvements to this boat launch will be addressed by one of three options identified in the Fairhaven Master Plan. All options retain the existing boat ramp and replace the existing boat ramp float. Option 1 constructs a new 10' by 240' visitor moorage float on the outside of the existing United States Coast Guard Float. Option 2 constructs a new two-lane boat ramp and float, and also adds a new 10' by 240' visitor moorage float on the outside of the existing United States Coast Guard Float. Option 3 constructs a new 20' wide dock for a boat hoist and adds a new 6' by 120' float. Option 3 also adds a new 10' by 240' visitor moorage float on the outside of the existing United States Coast Guard Float.
3. **Habitat Restoration:** No habitat restoration activities are currently planned as part of this project.
4. **Project Status as of July 2009:**
  - The Port expects to submit a Joint Aquatic Resources Protection Application (JARPA) for the Fairhaven public boat launch project before 2035.
  - The Port expects to submit a JARPA for maintenance to the existing water-dependent haul out dock in Fairhaven Marine Industrial Park before 2035.
5. **Anticipated Impacts and Mitigation Measures:** In-water construction activities are expected to be performed pursuant to authorizations obtained from numerous federal, state, and local permitting agencies including the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, National Marine Fisheries Service, United States Fish and Wildlife Service, Washington State Department of Ecology, Washington State Department of Natural Resources, Whatcom County, and/or the City of Bellingham with review by affected Tribes. The permitting process will involve an assessment of potential project impacts on a range of issues including: Tribal treaty rights, water resources, threatened and endangered species, finfish and shellfish habitat, historical/archeological resources, dredged material management, soils, air quality, cumulative effects, environmental justice, and other environmental impacts in accordance with the National Environmental Policy Act. It is anticipated that the Port will implement a range of mitigation measures including: effective spill prevention and response, storm water management, environmental remediation, habitat restoration, monitoring, and other associated corrective actions if needed.

It is also anticipated that Tribal cultural resources preservation and protection measures for this project will be developed in accordance with a Cultural Resources Preservation and Protection Plan for Port properties.

Specific anticipated impacts and mitigation measures include:

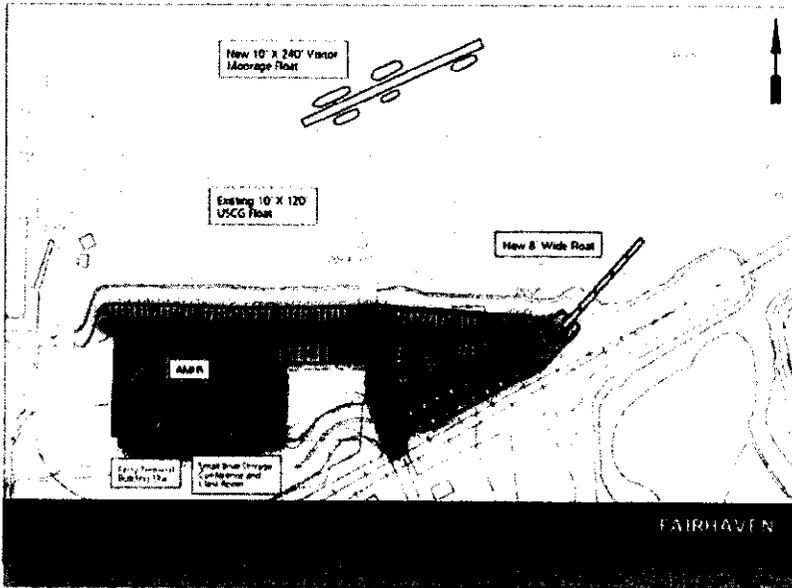
- *Dredging:* A limited amount of dredging will be required to maintain navigation depth for access to the Fairhaven public boat launch.

- *Placement of Fill Material:* A limited amount of fill material may be required to build new boat launch infrastructure. Any loss of aquatic land will be minimized for this project with appropriate mitigation measures performed according to Exhibit C.
- *Shoreline Armoring:* A limited amount of shoreline armoring repair may be required to support improvements to the Fairhaven public boat launch. However, to the extent practicable as interpreted by federal agencies, soft-shore defense approaches and other actions that will increase suitable substrate for surf smelt, sand lance, and other forage fish will be utilized.
- *Historic and Cultural Resources:* The project is located within historic tidelands which have been previously disturbed by dredge and fill activities. However, the possibility of encountering historic and prehistoric artifacts exists. State and federal regulations for protection and management of cultural resources will be followed during implementation of this project including notification and consultation with the Lummi Nation Tribal Historic Preservation Office (LNTHPO) in accordance with federal law.
- *Fishing Activity:* Waters in the vicinity of the project are Treaty-protected “Usual and Accustomed” fishing areas. Fishing activity in this area is managed by the affected Tribes and the Washington Department of Fish and Wildlife. Construction activities will be limited to allowable in-water work windows to avoid and/or minimize impacts to migrating salmon.
- *Dredge Material Management Program (DMMP):* The Bellingham open water disposal site, authorized under the DMMP will not be used for the disposal of any dredged material originating from this project.
- *Fishing Interference and Gear Loss Avoidance:* In addition to the standard mitigation measures described above, the Port project manager will inform the Lummi Nation of proposed vessel traffic (i.e., vessel types, routes and schedules) during project construction and will make practicable adjustments to minimize interference with Lummi fishermen and to avoid gear loss during the construction phase.

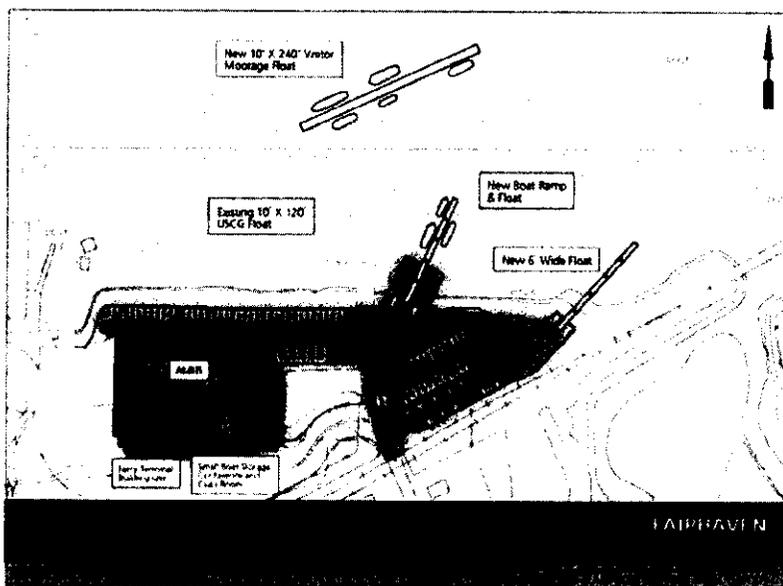
*The project description includes the likely maximum impacts. The project could be modified at the Port’s discretion to reduce this range of impacts.*

## Fairhaven Master Plan – Boat Launch Improvement Options

*Fairhaven Boat Launch Improvement Option 1 (Existing Boat Ramp):*



*Fairhaven Boat Launch Improvement Option 2 (New Boat Ramp):*





## **Project Number 9: The Waterfront District Master Plan FEIS**

1. **Project Name:** *The Waterfront District Master Plan FEIS*
2. **Project Description:** The Waterfront District Master Plan FEIS Project analyzes the environmental impacts of a proposal by the Port and City to adopt and implement a Master Development Plan and Development Agreement for The Waterfront District. The Master Development Plan and Development Agreements which includes land use and zoning regulations, is intended to transform the site from a historically industrial waterfront into a new neighborhood with residences, shops, offices, marine and light industry, institutional uses, as well as parks, trails and shoreline amenities along Bellingham Bay.
3. **Habitat Restoration:** Aquatic conditions in The Waterfront District are reflective of the area's history as a maritime industrial and shipping center on Bellingham Bay. The site includes over 2.5 miles of shoreline, the majority of which contains bulkheads, pile-supported over-water pier structures, wharfs, riprap, or combinations of these to facilitate maritime industrial operations. In general, due to the developed industrial nature of the site and the low quality of existing habitat, redevelopment will result in overall improvements to aquatic habitat environments. Redevelopment activities will include a reduction in over-water coverage, removal of creosote-treated piles, reduction of steel piles, conversion of bulkhead or riprap to sloped shoreline, and extensive riparian and aquatic restoration/enhancement.
4. **Project Status as of July 2009:**
  - The Port expects The Waterfront District Master Plan FEIS to be published in 2009.
  - The Port expects to adopt and implement a Master Development Plan and Development Agreement with the City of Bellingham for The Waterfront District in 2010.
  - The Port expects the mixed-use redevelopment of The Waterfront District will take place between 2010-2040.
5. **Anticipated Impacts and Mitigation Measures:** This is an Environmental Impact Statement under the State Environmental Policy Act (SEPA). Any actions studied in the FEIS will be subject to further permitting and review by state and federal agencies.



Stephanie Bower, Architectural Illustration

**The Waterfront District Master Plan FEIS -- Conceptual Illustration**

## **Project Number 10: Gate 3 Squalicum Marina Re-Alignment and Maintenance Dredging**

1. **Project Name:** *Gate 3 Squalicum Marina Re-Alignment and Maintenance Dredging*
2. **Project Description:** This Gate 3 Squalicum Marina Re-Alignment and Maintenance Dredging Project includes maintenance dredging in the Squalicum marina with upland or open water disposal and the replacement and realignment of Gate 3 F and G floats.
3. **Habitat Restoration:** No habitat restoration activities are currently planned as part of this project.
4. **Project Status as of July 2009:**
  - The Port expects to submit a Joint Aquatic Resources Protection Application (JARPA) for the Gate 3 Squalicum marina re-alignment and maintenance dredging project before 2015.
5. **Anticipated Impacts and Mitigation Measures:** In-water construction activities are expected to be performed pursuant to authorizations obtained from numerous federal, state, and local permitting agencies including the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, National Marine Fisheries Service, United States Fish and Wildlife Service, Washington State Department of Ecology, Washington State Department of Natural Resources, Whatcom County, and/or the City of Bellingham with review by affected Tribes. The permitting process will involve an assessment of potential project impacts on a range of issues including: Tribal treaty rights, water resources, threatened and endangered species, finfish and shellfish habitat, historical/archeological resources, dredged material management, soils, air quality, cumulative effects, environmental justice, and other environmental impacts in accordance with the National Environmental Policy Act. It is anticipated that the Port will implement a range of mitigation measures including: effective spill prevention and response, storm water management, environmental remediation, habitat restoration, monitoring, and other associated corrective actions if needed.

It is also anticipated that Tribal cultural resources preservation and protection measures for this project will be developed in accordance with a Cultural Resources Preservation and Protection Plan for Port properties.

Specific anticipated impacts and mitigation measures include:

- **Dredging:** This project requires 50,000 cubic yards of dredging with upland or open water disposal.
- **Placement of Fill Material:** A limited amount of fill material might be required to implement this project. Any loss of aquatic land will be minimized for this project with appropriate mitigation measures performed according to Exhibit C.
- **Shoreline Armoring:** Shoreline armoring repair will be required to implement this project. However, to the extent practicable as interpreted by federal agencies, soft-shore defense approaches and other actions that will increase suitable substrate for surf smelt, sand lance, and other forage fish will be utilized.
- **Historic and Cultural Resources:** The project is located within historic tidelands which have been previously disturbed by dredge and fill activities. However, the possibility of encountering historic and prehistoric artifacts exists. State and federal regulations for protection and management of cultural resources will be followed during implementation

of this project including notification and consultation with the Lummi Nation Tribal Historic Preservation Office (LNTHPO) in accordance with federal law.

- ***Fishing Activity:*** Waters in the vicinity of the project are Treaty-protected “Usual and Accustomed” fishing areas. Fishing activity in this area is managed by the affected Tribes and the Washington Department of Fish and Wildlife. Construction activities will be limited to allowable in-water work windows to avoid and/or minimize impacts to migrating salmon.
- ***Dredge Material Management Program (DMMP):*** The Bellingham open water disposal site, authorized under the DMMP will not be used for the disposal of any dredged material originating from this project.
- ***Fishing Interference and Gear Loss Avoidance:*** In addition to the standard mitigation measures described above, the Port project manager will inform the Lummi Nation of proposed vessel traffic (i.e., vessel types, routes and schedules) during project construction and will make practicable adjustments to minimize interference with Lummi fishermen and to avoid gear loss during the construction phase.

*The project description includes the likely maximum impacts. The project could be modified at the Port’s discretion to reduce this range of impacts.*



Site: Squaticum Waterway Marina Realignment  
and Maintenance Dredging

Latitude: 48° 45' 47"  
Longitude: 122° 30' 36"

Address: 2652 Harbor Loop Drive  
(Intersection Squaticum Way and  
Harbor Loop Drive)  
Bellingham, Washington 98225



<p>Port of Bellingham Bellingham, Washington</p>	<p>Project Area Site Map</p>	
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## **Project Number 11: Squalicum Waterway Marine Access and Shoreline Restoration**

- 1. Project Name:** *Squalicum Waterway Marine Access and Shoreline Restoration*
- 2. Project Description:** This Squalicum Waterway Marine Access and Shoreline Restoration Project includes improvements to the property west of Mount Baker Plywood to support ongoing water-related industrial uses in and around the Squalicum Waterway, a federal navigation channel. In-water activities include navigation dredging to access the property from the Squalicum Waterway, a commercial boat ramp and floats, and shoreline stabilization to support new marine infrastructure. Future uses of the property west of Mount Baker Plywood might include activities such as:
  - Boat haul out and storage facilities;
  - Marine rental and sales;
  - Boat repair facilities;
  - Water-related supply and retail sales;
  - Boat building;
  - Barge moorage and off-load slips;
  - Gravel operations;
  - Bulkhead and dock construction;
  - Outdoor storage;
  - Pleasure and commercial vessel moorage;
  - Public and private utility buildings and structures;
  - Water-oriented education, cultural, governmental or religious facilities;
  - Public parks with public access
- 3. Habitat Restoration:** This project might include habitat restoration in and around the Squalicum Creek estuary. These activities could include 1,500 feet of nearshore habitat restoration on the north side of Mount Baker Plywood from Little Squalicum Beach Park to Little Squalicum Park; or nearshore habitat restoration on the south side of Mount Baker Plywood, in the Squalicum Creek estuary.
- 4. Project Status as of July 2009:**
  - The Port expects a Joint Aquatic Resources Protection Application (JARPA) for commercial development of the property west of Mount Baker Plywood before 2030.
- 5. Anticipated Impacts and Mitigation Measures:** In-water construction activities are expected to be performed pursuant to authorizations obtained from numerous federal, state, and local permitting agencies including the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, National Marine Fisheries Service, United States Fish and Wildlife Service, Washington State Department of Ecology, Washington State Department of Natural Resources, Whatcom County, and/or the City of Bellingham with review by affected Tribes. The permitting process will involve an assessment of potential project impacts on a range of issues including: Tribal treaty rights, water resources, threatened and endangered species, finfish and shellfish habitat, historical/archeological resources, dredged material management, soils, air quality, cumulative effects, environmental justice, and other environmental impacts in accordance with the National Environmental Policy Act. It is anticipated that the Port will implement a range of mitigation measures including: effective spill prevention and response, storm water management, environmental remediation, habitat restoration, monitoring, and other associated corrective actions

if needed.

It is also anticipated that Tribal cultural resources preservation and protection measures for this project will be developed in accordance with a Cultural Resources Preservation and Protection Plan for Port properties.

Specific anticipated impacts and mitigation measures include:

- *Dredging*: This project will require navigation dredging to access the vacant property on the west side of Mount Baker Plywood for water-related industrial development.
- *Placement of Fill Material*: A limited amount of fill material might be required as part of this project. Any loss of aquatic land will be minimized for this project with appropriate mitigation measures performed according to Exhibit C.
- *Shoreline Armoring*: A limited amount of shoreline armoring might be required to implement this project. However, to the extent practicable as interpreted by federal agencies, soft-shore defense approaches and other actions that will increase suitable substrate for surf smelt, sand lance, and other forage fish will be utilized.
- *Historic and Cultural Resources*: The project is located within historic tidelands which have been previously disturbed by dredge and fill activities. However, the possibility of encountering historic and prehistoric artifacts exists. State and federal regulations for protection and management of cultural resources will be followed during implementation of this project including notification and consultation with the Lummi Nation Tribal Historic Preservation Office (LNTHPO) in accordance with federal law.
- *Fishing Activity*: Waters in the vicinity of the project are Treaty-protected "Usual and Accustomed" fishing areas. Fishing activity in this area is managed by the affected Tribes and the Washington Department of Fish and Wildlife. Construction activities will be limited to allowable in-water work windows to avoid and/or minimize impacts to migrating salmon.
- *Fishing Interference and Gear Loss Avoidance*: In addition to the standard mitigation measures described above, the Port project manager will inform the Lummi Nation of proposed vessel traffic (i.e., vessel types, routes and schedules) during project construction and will make practicable adjustments to minimize interference with Lummi fishermen and to avoid gear loss during the construction phase. The Port will facilitate a meeting with representatives from the Port, Lummi Nation, and the Port's tenants to exchange information on tribal fishing activities and facility operations to determine practicable traffic corridors and schedules that would minimize interference between vessels using the facility and tribal fishers.
- *Dredge Material Management Program (DMMP)*: The Bellingham open water disposal site, authorized under the DMMP will not be used for the disposal of any dredged material originating from this project.

*The project description includes the likely maximum impacts. The project could be modified at the Port's discretion to reduce this range of impacts.*

Future development of the property west of Mount Baker Plywood will support water-related commercial uses

A commercial boat ramp & floats will support future property development

Navigation dredging will allow marine access to the property west of Mount Baker Plywood from the Squaticum Waterway

Potential Shoreline Restoration Areas

Mount Baker Plywood

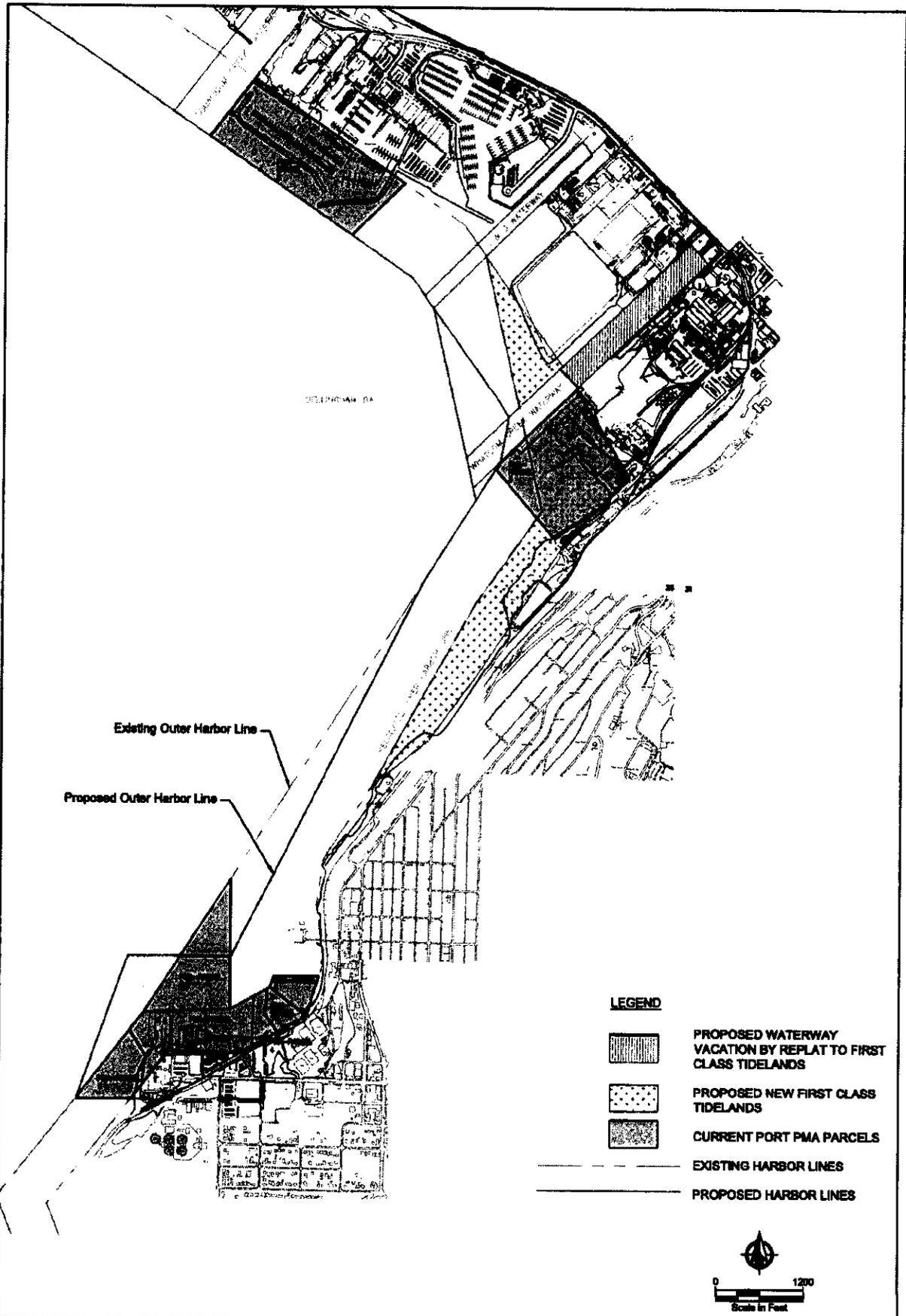
Squaticum Waterway

### Squaticum Waterway Marine Access & Shoreline Restoration

## **Project Number 12: State Harbor Line Adjustment**

- 1. Project Name:** *State Harbor Line Adjustment*
- 2. Project Description:** The Port has requested that the Washington State Department of relocate portions of inner and outer harbor lines in Bellingham Bay to align Harbor Areas with current shorelines and navigable water depths. Harbor Areas were established by the state to support commerce and navigation, and the proposed harbor line adjustments would support ongoing industrial activities in certain areas including the Bellingham Shipping Terminal, the Fairhaven Shipyard area, and the Squalicum Waterway. The proposed Harbor Line adjustments would also support the transition from heavy industrial activities to mixed-use commercial activities within the central waterfront.
- 3. Habitat Restoration:** The proposed adjustment to harbor lines does not include a habitat restoration component.
- 4. Project Status as of July 2009:**
  - The Department of Natural Resources is reviewing the Port's proposed adjustment to the Bellingham Bay harbor lines. The Port expects the Department of Natural Resources will approve the proposed harbor line changes before 2012.
- 5. Anticipated Impacts and Mitigation Measures:**
  - *Dredging:* The proposed adjustment to harbor lines does not include dredging.
  - *Placement of Fill Material:* The proposed adjustment to harbor lines does not include the placement of fill material.
  - *Shoreline Armoring:* The proposed adjustment to harbor lines does not include shoreline armoring.
  - *Historic and Cultural Resources:* The proposed adjustment to harbor lines does not affect historic and cultural resources.
  - *Fishing Activity:* Waters in and around Bellingham Bay are Treaty-protected "Usual and Accustomed" fishing areas. The proposed adjustment to harbor lines does not impact fishing activity in these areas.

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## **Project Number 13: I & J Waterway Commercial/Recreational Boat Haul Out**

- 1. Project Name:** *I & J Waterway Commercial/Recreational Boat Haul Out*
- 2. Project Description:** The *I & J Waterway Commercial/Recreational Boat Haul Out* Project will replace the existing boat haul out at Hilton Harbor located in the I & J Waterway with a new boat lift to service commercial and recreational boaters.
- 3. Habitat Restoration:** This project will likely include the removal of derelict creosote pilings and over-water structures.
- 4. Project Status as of July 2009:**
  - The Port expects to submit a Joint Aquatic Resources Protection Application (JARPA) to support a new commercial/recreational haul out in the I & J Waterway before 2020.
- 5. Anticipated Impacts and Mitigation Measures:** In-water construction activities are expected to be performed pursuant to authorizations obtained from numerous federal, state, and local permitting agencies including the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, National Marine Fisheries Service, United States Fish and Wildlife Service, Washington State Department of Ecology, Washington State Department of Natural Resources, Whatcom County, and/or the City of Bellingham with review by affected Tribes. The permitting process will involve an assessment of potential project impacts on a range of issues including: Tribal treaty rights, water resources, threatened and endangered species, finfish and shellfish habitat, historical/archeological resources, dredged material management, soils, air quality, cumulative effects, environmental justice, and other environmental impacts in accordance with the National Environmental Policy Act. It is anticipated that the Port will implement a range of mitigation measures including: effective spill prevention and response, storm water management, environmental remediation, habitat restoration, monitoring, and other associated corrective actions if needed.

It is also anticipated that Tribal cultural resources preservation and protection measures for this project will be developed in accordance with a Cultural Resources Preservation and Protection Plan for Port properties.

Specific anticipated impacts and mitigation measures include:

- **Dredging:** This project will require dredging for marine access to the new boat lift.
- **Placement of Fill Material:** A limited amount of fill material might be used to support infrastructure requirements for the new boat lift. Any loss of aquatic land will be minimized for this project with appropriate mitigation measures performed according to Exhibit C.
- **Shoreline Armoring:** Shoreline armoring repair will be required to support new boat launch infrastructure. However, to the extent practicable as interpreted by federal agencies, soft-shore defense approaches and other actions that will increase suitable substrate for surf smelt, sand lance, and other forage fish will be utilized.
- **Historic and Cultural Resources:** The project is located within historic tidelands which have been previously disturbed by dredge and fill activities. However, the possibility of encountering historic and prehistoric artifacts exists. State and federal regulations for protection and management of cultural resources will be followed during implementation

of this project including notification and consultation with the Lummi Nation Tribal Historic Preservation Office (LNTHPO) in accordance with federal law.

- *Fishing Activity:* Waters in the vicinity of the project are Treaty-protected “Usual and Accustomed” fishing areas. Fishing activity in this area is managed by the affected Tribes and the Washington Department of Fish and Wildlife. Construction activities will be limited to allowable in-water work windows to avoid and/or minimize impacts to migrating salmon.
- *Dredge Material Management Program (DMMP):* The Bellingham open water disposal site, authorized under the DMMP will not be used for the disposal of any dredged material originating from this project.
- *Fishing Interference and Gear Loss Avoidance:* In addition to the standard mitigation measures described above, the Port project manager will inform the Lummi Nation of proposed vessel traffic (i.e., vessel types, routes and schedules) during project construction and will make practicable adjustments to minimize interference with Lummi fishermen and to avoid gear loss during the construction phase.

*The project description includes the likely maximum impacts. The project could be modified at the Port’s discretion to reduce this range of impacts.*

The replacement of the existing haul out with a new recreational/commercial boat lift will likely include the removal of derelict creosote pilings and over-water structures, repairs to the existing bulkheads and docks, a new wave attenuator, and support facilities.



Waterway

Waterway

Waterway

# I & J Waterway Commercial / Recreational Boat Haul Out

## **Project Number 14: Blaine Harbor Facility Improvements**

- 1. Project Name:** *Blaine Harbor Facility Improvements*
- 2. Project Description:** The Blaine Harbor Facilities Improvements Project includes both short-term and long-term elements:
  - a. Short-Term Elements:** In July 2009, the Port will replace the floats and pilings at the Blaine boat launch with new concrete ones to support recreational and commercial boaters.
  - b. Long-Term Elements:** During the next 30 years the Port is planning a range of facility improvements including upgrading the fueling facilities, cleaning up historic contamination, improving commercial launching facilities, adding a new boat hoist to service mid-size boats, adding approximately 420 lineal feet of guest moorage to service 12-15 overnight visitors, repairing and replacing 800 lineal feet of bulkheads and sheet piles, repairing 150 feet of riprap, adding a Gate 4 access ramp to floats A-G, and performing maintenance dredging. The upgrades to marine infrastructure will occur in conjunction with the environmental remediation of contaminated aquatic sediments as the area develops.
- 3. Habitat Restoration:** Blaine Harbor facility improvements will include the restoration of 340 feet of shoreline to more natural conditions, including the creation and/or enhancement of 3 pocket beaches.
- 4. Project Status as of July 2009:**
  - The replacement of floats and pilings at the Blaine boat launch are anticipated to be completed in July 2009.
  - The Port expects to submit Joint Aquatic Resources Protection Applications (JARPAs) to implement long-term improvements to the Blaine Harbor facility between 2009-2040.
- 5. Anticipated Impacts and Mitigation Measures:** In-water construction activities are expected to be performed pursuant to authorizations obtained from numerous federal, state, and local permitting agencies including the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, National Marine Fisheries Service, United States Fish and Wildlife Service, Washington State Department of Ecology, Washington State Department of Natural Resources, Whatcom County, and/or the City of Bellingham with review by affected Tribes. The permitting process will involve an assessment of potential project impacts on a range of issues including: Tribal treaty rights, water resources, threatened and endangered species, finfish and shellfish habitat, historical/archeological resources, dredged material management, soils, air quality, cumulative effects, environmental justice, and other environmental impacts in accordance with the National Environmental Policy Act. It is anticipated that the Port will implement a range of mitigation measures including: effective spill prevention and response, storm water management, environmental remediation, habitat restoration, monitoring, and other associated corrective actions if needed.

It is also anticipated that Tribal cultural resources preservation and protection measures for this project will be developed in accordance with a Cultural Resources Preservation and Protection Plan for Port properties.

Specific anticipated impacts and mitigation measures include:

- ***Dredging:*** Dredging, inside the harbor, will be required to implement the Blaine Harbor facility improvements and maintain navigation capacity in Blaine Harbor.
- ***Placement of Fill Material:*** A limited amount of fill material will be required to implement the Blaine Harbor facility improvements. Any loss of aquatic land will be minimized for this project with appropriate mitigation measures performed according to Exhibit C.
- ***Shoreline Armoring:*** A limited amount of shoreline armoring repair or replacement will be required to implement the Blaine Harbor facility improvements. However, to the extent practicable as interpreted by federal agencies, soft-shore defense approaches and other actions that will increase suitable substrate for surf smelt, sand lance, and other forage fish will be utilized.
- ***Historic and Cultural Resources:*** The project is located within historic tidelands which have been previously disturbed by dredge and fill activities. However, the possibility of encountering historic and prehistoric artifacts exists. State and federal regulations for protection and management of cultural resources will be followed during implementation of this project including notification and consultation with the Lummi Nation Tribal Historic Preservation Office (LNTHPO) in accordance with federal law.
- ***Fishing Activity:*** Waters in the vicinity of the project are Treaty-protected “Usual and Accustomed” fishing areas. Fishing activity in this area is managed by the affected Tribes and the Washington Department of Fish and Wildlife. Construction activities will be limited to allowable in-water work windows to avoid and/or minimize impacts to migrating salmon.
- ***Dredge Material Management Program (DMMP):*** The Bellingham open water disposal site, authorized under the DMMP will not be used for the disposal of any dredged material originating from this project.
- ***Fishing Interference and Gear Loss Avoidance:*** In addition to the standard mitigation measures described above, the Port project manager will inform the Lummi Nation of proposed vessel traffic (i.e., vessel types, routes and schedules) during project construction and will make practicable adjustments to minimize interference with Lummi fishermen and to avoid gear loss during the construction phase.

*The project description includes the likely maximum impacts. The project could be modified at the Port’s discretion to reduce this range of impacts.*



## **Project Number 15: Bellingham Shipping Terminal Improvements**

- 1. Project Name:** *Bellingham Shipping Terminal Improvements*
- 2. Project Description:** The Bellingham Shipping Terminal is located in the Whatcom Waterway and specializes in bulk and break bulk cargos. This Bellingham Shipping Terminal Improvements Project includes both short-term and long-term elements:
  - a. Short-Term Elements:** The Bellingham Shipping Terminal has been identified by NOAA as a potential location for its Pacific Research Fleet. NOAA is expected to finalize its selection process in 2009 and, if chosen, improvements to the Bellingham Shipping Terminal will begin in 2010. These improvements include seismic upgrades to the existing pier (pile/beam frames at selected pile bents, fenders as necessary, and an under-dock sprinkler system), and the replacement of 450 feet of existing bulkhead on the north end of the shipping terminal. The existing pier will be extended on the south side with a 30 foot wide by 55 foot long concrete pier; and on the north side with a 20 foot wide by 260 foot long wave attenuation float. The wave attenuation float, and three finger piers attached to the float, will support the Whatcom Waterway cleanup remedy and also provide 400 lineal feet of small boat moorage for NOAA. A portion of the old Georgia Pacific pier may be removed as mitigation, consistent with paragraph 5 below.
  - b. Long-Term Elements:** Maintenance, repair, and upgrades to the existing facilities at the Bellingham Shipping Terminal will support continued deep-water uses over the long-term.
- 3. Habitat Restoration:** Improvements to the Bellingham Shipping Terminal will be coordinated with habitat restoration efforts in and around the Whatcom Waterway.
- 4. Project Status as of July 2009:**
  - The Port expects to submit a Joint Aquatic Resources Protection Application (JARPA) for in-water redevelopment activities at the Bellingham Shipping Terminal in 2009/10 if selected as the new location of NOAA's Pacific Research Fleet.
  - If the Bellingham Shipping Terminal is not selected as the new location of NOAA's Pacific Research Fleet, the Port expects to submit JARPAs to implement improvements at the Bellingham Shipping Terminal to support continued deep-water uses before 2015.
- 5. Anticipated Impacts and Mitigation Measures:** In-water construction activities are expected to be performed pursuant to authorizations obtained from numerous federal, state, and local permitting agencies including the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, National Marine Fisheries Service, United States Fish and Wildlife Service, Washington State Department of Ecology, Washington State Department of Natural Resources, Whatcom County, and/or the City of Bellingham with review by affected Tribes. The permitting process will involve an assessment of potential project impacts on a range of issues including: Tribal treaty rights, water resources, threatened and endangered species, finfish and shellfish habitat, historical/archeological resources, dredged material management, soils, air quality, cumulative effects, environmental justice, and other environmental impacts in accordance with the National Environmental Policy Act. It is anticipated that the Port will implement a range of mitigation measures including: effective spill prevention and response, storm water management, environmental remediation, habitat restoration, monitoring, and other associated corrective actions

if needed.

It is also anticipated that Tribal cultural resources preservation and protection measures for this project will be developed in accordance with a Cultural Resources Preservation and Protection Plan for Port properties.

Specific anticipated impacts and mitigation measures include:

- **Dredging:** This project will include the dredging of aquatic sediments around the Bellingham Shipping Terminal to support navigation requirements of deep-water uses.
- **Placement of Fill Material:** Any loss of aquatic land will be minimized for this project with appropriate mitigation measures performed according to Exhibit C.
- **Shoreline Armoring:** Replacement or repair of shoreline armoring might be required in some areas. However, to the extent practicable as interpreted by federal agencies, soft-shore defense approaches and other actions that will increase suitable substrate for surf smelt, sand lance, and other forage fish will be utilized.
- **Historic and Cultural Resources:** The project is located within historic tidelands which have been previously disturbed by dredge and fill activities. However, the possibility of encountering historic and prehistoric artifacts exists. State and federal regulations for protection and management of cultural resources will be followed during implementation of this project including notification and consultation with the Lummi Nation Tribal Historic Preservation Office (LNTHPO) in accordance with federal law.
- **Fishing Activity:** The majority of this project occurs within the Whatcom Waterway. Waters in the vicinity of the project are Treaty-protected "Usual and Accustomed" fishing areas. Fishing activity in this area is managed by the affected Tribes and the Washington Department of Fish and Wildlife. Construction activities will be limited to allowable in-water work windows to avoid and/or minimize impacts to migrating salmon.
- **Dredge Material Management Program (DMMP):** The Bellingham open water disposal site, authorized under the DMMP will not be used for the disposal of any dredged material originating from this project.
- **Fishing Interference and Gear Loss Avoidance:** In addition to the standard mitigation measures described above, the Port project manager will inform the Lummi Nation of proposed vessel traffic (i.e., vessel types, routes and schedules) during project construction and will make practicable adjustments to minimize interference with Lummi fishermen and to avoid gear loss during the construction phase. The Port will facilitate a meeting with representatives from the Port, Lummi Nation, and the Port's tenants to exchange information on tribal fishing activities and facility operations to determine practicable traffic corridors and schedules that would minimize interference between vessels using the facility and tribal fishers.

*The project description includes the likely maximum impacts. The project could be modified at the Port's discretion to reduce this range of impacts.*

Improvements to the Bellingham Shipping Terminal, including a 30 foot wide by 55 foot long concrete pier extension, will support the potential relocation of NOAA's Pacific Research Fleet.

450 feet of bulkhead replacement

A portion of the old Georgia Pacific pier may be removed as mitigation, consistent with Exhibit C.

Whatcom Waterway

A 20 foot wide by 260 foot long wave attenuator with three attached finger piers will support the Whatcom Waterway cleanup remedy and provide 400 lineal feet of small boat moorage for NOAA's Pacific Research Fleet.

## Bellingham Shipping Terminal: Short-Term Elements

**EXHIBIT "C"**

**LUMMI NATION AND THE PORT OF BELLINGHAM  
NATURAL RESOURCES MITIGATION POLICY**

**EXHIBIT C**  
**LUMMI NATION AND THE PORT OF BELLINGHAM**  
**NATURAL RESOURCES MITIGATION POLICY**

The Parties recognize that aquatic habitat and the ability of tribal members to exercise their treaty rights may be affected by the projects identified in Exhibit A and Exhibit B (the "listed projects") of the Intergovernmental Framework Agreement Between the Lummi Nation and the Port of Bellingham ("Framework Agreement"). The listed projects include improvements to environmental conditions, ecosystem functions and long-term stewardship of marine shorelines and aquatic lands in Bellingham Bay and Blaine Harbor. To achieve these improvements, the design and/or construction of the listed projects may need adjustments to mitigate any unavoidable impacts. In addition to the mitigation measures set forth in the Framework Agreement (including Exhibit B) and subsequent implementation agreements, including but not limited to, Implementation Agreement No. 1, the Port and the Lummi Nation agree that, in design and construction, they will conform to the following natural resources mitigation principles and work to achieve the natural resources mitigation objectives identified below.

For the purposes of this Agreement, "natural resources mitigation" is defined as eliminating or reducing the impacts from any of the listed projects to natural resources and the associated Lummi way of life (*Schelangen*). Protection of tribal cultural resources will be addressed under separate protocols agreed to by the Parties.

The Port will identify and implement natural resources mitigation for the listed projects according to the guiding principles presented below. The Port will keep the Lummi Nation Natural Resources Department reasonably apprised of its actions to identify and implement natural resources mitigation for the listed projects.

**Natural Resources Mitigation Principles:**

1. The principle goal of natural resources mitigation activities is the long-term protection of natural resources, including the ability of tribal members to continue to exercise tribal Treaty rights to fish, hunt, and gather.
2. The Port will ensure that the listed projects will be designed, permitted, and constructed consistent with the goals of the "Comprehensive Strategy for Bellingham Bay", as amended, and the then current federal, state, and local regulatory framework for in-water and shoreline work, including in particular, the federal Clean Water Act, Endangered Species Act, Rivers and Harbors Act, and the state Model Toxics Control Act.
3. The Port will ensure that the listed projects will be designed to provide net improvements to the environmental conditions, ecosystem functions, and stewardship of publicly-owned land by taking strategic advantage of opportunities to remove, restore, and/or replace dilapidated industrial structures and shorelines, to the extent practicable. The term "practicable" shall be interpreted by the federal agencies with permitting responsibilities and generally means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

4. In cases where net improvements to the environmental conditions, ecosystem functions, and stewardship of publicly-owned land cannot be achieved without making significant design changes or adding significant features to the project design for any listed projects, natural resources mitigation will be used to lessen the impacts from the proposed project.
5. In certain cases, restoration activities may be included as a component of natural resources mitigation in order to redevelop degraded or lost ecological systems that historically provided functions necessary for the life cycles of local animal and plant species or communities, particularly those essential for meaningful activities reserved for the Lummi Nation under treaty. Restoration can be a form of project mitigation when it is used to recover resources from specific previous impacts.
6. Appropriate natural resources mitigation activities will be chosen through the following sequence in the given order of priority, which is consistent with the current federal, state, and local regulatory framework for in-water and shoreline work:
  - a. **Avoidance:** Avoiding the impact altogether by not taking a certain action or parts of an action. Avoidance means to design and implement a project so that it does not impact natural resources. In essence, a proposed project will not occur if there is a practicable alternative available that will not result in adverse impacts to natural resources;
  - b. **Minimization:** Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts. Minimization will occur when impacts cannot be avoided by a listed project. In these instances, the listed project will be modified and conditions that control the project implementation will be put in place to ensure that unavoidable adverse impacts are, to the extent practicable, minimized;
  - c. **Restoration:** Rectifying the existing or potential impact of a listed project on natural resources by repairing, rehabilitating, or restoring the affected environment;
  - d. **Reduction:** Reducing or eliminating the impact of a listed project over time by preservation and maintenance of environmental features;
  - e. **Natural Resources Replacement, Enhancement or Substitution:** Compensating for impacts of the listed projects by replacing, enhancing, or providing substitute resources or environments. Compensatory natural resources mitigation occurs when impacts are unavoidable and will result in a loss of natural resources or the current ability of tribal members to exercise Treaty fishing, hunting, and gathering rights. Compensatory natural resources mitigation means that the Port must preserve a high quality natural resource, enhance an existing functional natural resource, restore an existing degraded natural resource, or create a new man-made natural resource. Preferably, the compensatory natural resources mitigation will occur at the same location or watershed where the project impacts will occur. However, consistent with the Draft Habitat Mitigation Framework for the Comprehensive Strategy for Bellingham Bay, if a new natural resource cannot be built on-site, the off-site location should be in the same geographic area. The compensatory mitigation

should occur prior to, or in coordination with, the construction of any features that may cause impacts associated with a proposed action; and

- f. **Monitoring/Assessment:** Monitoring the project construction and operation to determine potential remaining impacts or unanticipated conditions and taking appropriate corrective measures to ensure that defined performance standards are achieved.
7. The existing and historic ecosystem characteristics of the Bellingham Bay and Blaine Harbor environments must be considered when evaluating options for natural resources mitigation actions in order to determine practicable approaches for restoring natural resources and ecosystem functions over the long-term.
8. The overall goal for all mitigation measures is no net loss of natural resources or impacts on the current ability of tribal members to exercise Treaty rights to fish, hunt, and gather and a net gain in natural resources and ecosystem functions.

**Mitigation Objectives:**

1. Provide clean sediments, consistent with the Draft Habitat Mitigation Framework for the Comprehensive Strategy for Bellingham Bay, as amended, to support functions and species.
2. Restore intertidal and sub-tidal habitat, including eelgrass beds and surf smelt and sand lance habitat along the Bellingham Shoreline, to the extent practicable.
3. Restore and enhance the degraded estuaries of Whatcom Creek, Squalicum Creek, Padden Creek, and Little Squalicum Creek to support salmonids, salmonid prey species, and functions such as refuge, feeding, and rearing.
4. Restore, enhance, and protect viable habitat that provides connective corridors between estuary and open water habitats and between other habitats in the open water environment.
5. Restore, enhance, and protect natural processes that create and maintain habitat for finfish and shellfish.
6. Preserve and protect existing quality habitat that tends to either concentrate sensitive life history stages and/or support large numbers of species of concern.
7. Maximize habitat restoration and protection opportunities associated with remediation and/or shoreline development projects, including increase of suitable habitat for forage fish (e.g., surf smelt and sand lance).
8. Restore lost habitat areas and associated functions by removing remnant dilapidated industrial structures, including creosote timbers and pilings, poor quality riprap armoring and unnecessary piers and wharves, by either removing or replacing treated timber structures and by restoring intertidal shorelines.

**IMPLEMENTATION AGREEMENT NO. 1  
BETWEEN THE LUMMI NATION AND THE PORT OF BELLINGHAM**

The Parties ("Port" and "Lummi Nation") enter into this Implementation Agreement No. 1 ("Agreement No. 1") on the \_\_\_\_\_ day of August, 2009, for the purpose of addressing specific short-term goals and objectives arising from the Parties' Intergovernmental Framework Agreement (the "Framework Agreement") and their mutual desire to work cooperatively to implement Bellingham Bay clean-up and redevelopment. The Parties agree that, when executed by both Parties, this Agreement No. 1 shall be Addendum No. 1 to the Framework Agreement and shall be interpreted and implemented consistent with the terms of the Framework Agreement.

**Term:** The Parties intend that the term of this Agreement No. 1 shall continue until the execution of Implementation Agreement No. 2, at which time it is anticipated that the unfulfilled items herein will be incorporated into Implementation Agreement No. 2. Notwithstanding the foregoing, all promises or covenants contained herein shall survive termination until fully performed.

**Purpose:** The Parties shall cooperate during the term of Agreement No. 1 to accomplish the goals and tasks set forth below and shall perform due diligence on matters that will be addressed in subsequent implementation agreements.

**A. Responsibilities and Obligations of the Port in Agreement No. 1:**

1. **2009 Moorage Credit.** The Port will credit to Lummi Nation fishers a total of \$60,000 for the calendar year 2009, and \$60,000 for calendar year 2010, to be applied to eligible moorage bills at any Port facilities. The Lummi Nation will be responsible for identifying eligible Lummi fishers and allocating the \$60,000 credit amongst them each calendar year. Moorage credits will be applied to the linear footage of dock space; additional rafting for Lummi vessels will be allowed at no additional charge. Rafting will be undertaken in such a manner as to not impede the operation of the marina as reasonably determined by the Port. The Lummi Nation will, prior to utilizing the Port facilities under this Agreement No. 1, provide evidence of blanket liability insurance coverage satisfactory to the Port. The Lummi Nation will regularly provide evidence of ongoing liability insurance coverage satisfactory to the Port, such that there is no lapse in coverage. If the Nation does not provide such evidence of coverage, Lummi fishers covered by this provision will be required to provide proof of insurance or be excluded from Port facilities. Lummi fishers will comply with all harbor rules to be eligible for the credit. The \$60,000 credit per calendar year is indexed to the moorage rates in effect as of February 19, 2009. Notwithstanding the expiration of this Agreement No. 1, the moorage credit will continue through calendar year 2010.
2. **Deferral of Past Due Moorage.** The Port will defer the resolution of past due moorage bills of Lummi fishers in the approximate amount of \$126,000 to later agreement with the Lummi Nation, but in no event later than June 1, 2010. The individual fishers who have

incurred the past due balances will be eligible to return to the Port's facilities during the term of this Agreement No. 1. Lummi fishers will comply with all harbor rules to be eligible for the deferral.

3. **Payment for Technical Expertise and Support.** The Port will provide the Lummi Nation a payment of \$50,000, within thirty (30) days of the effective date of this Agreement No. 1, for technical support services to be provided by the Lummi Natural Resources Department staff during the term of this Agreement No. 1. It is contemplated that such technical services will assist the Parties in accomplishing the goals and objectives described below in Section C.
4. **NOAA - Small Business Contracts.** The Port will support the Lummi Nation's efforts to work with NOAA to promote Small Business Administration Section 8(a) sole source and other contracts for the Lummi Nation.
5. **NOAA Research Opportunities.** The Port will support the Lummi Nation Department of Natural Resources' efforts to work with NOAA to promote opportunities for NOAA research.
6. **Bellingham Bay PSDDA Site.** The dredge material from Port projects will not be placed in the Bellingham Bay PSDDA site and the Port will support the permanent closure of the Bellingham Bay PSDDA Site.
7. **JARPA for the Whatcom Waterway Site.** At the time of submission, the Port will provide the Lummi Nation with a copy of the Port's Joint Aquatic Resources Protection Applications (JARPAs) and all associated documents for the short-term and long-term elements of the *Whatcom Waterway Site Clean-Up and Clean Ocean Marina Project*, which is Project No. 3 in Exhibit B to the Framework Agreement. The Port recognizes that until further agreement, the Lummi Nation will be free to oppose the Port's permit application. The Port agrees that, in light of ongoing negotiations, the Lummi Nation may reserve its right to later comment on the Port's JARPAs for the project.
8. **JARPA for the Gate 3 Dredging Project.** At the time of submission, the Port will provide the Lummi Nation with a copy of the Port's JARPA and all associated documents for all elements of the *Gate 3 Squalicum Marina Re-Alignment and Maintenance Dredging*, which is Project 10 in Exhibit B to the Framework Agreement.
9. **JARPA for the Fairhaven Drydock Project.** The Port will provide the Lummi Nation with a copy of the JARPA or any amendments submitted by the Port or the Port's tenant for the short-term elements only as described in paragraph 2(a) of the *Fairhaven Shipyard / New Dry-Dock Project*, which is Project 7 in Exhibit B to the Framework Agreement.
10. **NOAA Pier Rehabilitation.** At the time of submission, the Port will provide the Lummi Nation with a copy of the Port's JARPA and all associated documents for the short-term elements only as described in paragraph 2(a) of the *Bellingham Shipping Terminal Improvements Project*, which is Project 15 in Exhibit B to the Framework Agreement.

11. Marina Advisory Committee. The Port will create a position on the Port's Marina Advisory Committee to be filled by appointment by the Port Commission with a Lummi Nation representative recommended by the Lummi Nation Natural Resources Commission and approved by the Lummi Indian Business Council.

**B. Responsibilities and Obligations of the Lummi Nation in Agreement No. 1:**

1. Continued Lummi Nation NOAA Support and Response to the Short-term Elements of the Bellingham Shipping Terminal Improvements Project. It is noted that the Lummi Nation has provided a letter of support for the Port effort to have NOAA relocate to Bellingham. The Lummi Nation will not oppose the relocation of NOAA's Pacific fleet to the Port's facility. In this regard, the Lummi Nation will respond within legal time frames to the Port's JARPA for the short-term elements only as described in paragraph 2(a) of the *Bellingham Shipping Terminal Improvements Project*, which is Project 15 in Exhibit B to the Framework Agreement and inform permitting agencies that the Nation does not oppose the permits for the short-term elements only as described in paragraph 2(a) of the *Bellingham Shipping Terminal Improvements Project*, provided that NOAA has made a decision to relocate its Marine Operations Center-Pacific to Bellingham and as long as the mitigation measures identified in Exhibit B and Exhibit C of the Framework Agreement are implemented.
2. Technical Support Services. Lummi Nation Natural Resources Department staff will provide expertise and technical support services during the term of this Agreement No. 1 to assist in accomplishing the Parties' goals and objectives described below in Section C.
3. Lummi Nation Response to Short-term Elements of the Blaine Harbor Facility Improvements Project. It is noted that as negotiations of this Agreement No. 1 progressed, the Lummi Nation did not oppose the JARPA for the short-term elements only as described in paragraph 2(a) of the *Blaine Harbor Facility Improvements Project*, which is Project 14 in Exhibit B to the Framework Agreement, in order to move the negotiations forward. The Port and the Lummi Nation agree that the non-opposition of the Lummi Nation has been provided by the Lummi Nation as part of this Agreement No. 1.
4. Lummi Nation Response to JARPAs for Short-term and Long-term Elements of Whatcom Waterway Site Clean-Up and Clean Ocean Marina Project. The Lummi Nation will respond within legal time frames to the Port's JARPAs for the short-term and long-term elements of the *Whatcom Waterway Site Clean-Up and Clean Ocean Marina Project*, which is Project No. 3 in Exhibit B to the Framework Agreement, and inform permitting agencies that the Nation and the Port are negotiating an agreement concerning the project. The Nation will inform the permitting agencies that it is not opposed to the agencies proceeding with work on the permit application.

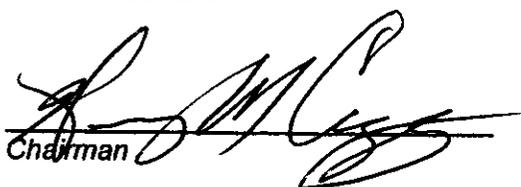
5. Lummi Nation Response to JARPA for All Elements of the Gate 3 Squalicum Marina Re-Alignment and Maintenance Dredging Project. The Lummi Nation will respond within legal time frames to the Port's JARPA for all elements of the *Gate 3 Squalicum Marina Re-Alignment and Maintenance Dredging Project*, which is Project 10 in Exhibit B to the Framework Agreement, and inform permitting agencies that the Nation does not oppose the permit for all elements of the *Gate 3 Squalicum Marina Re-Alignment and Maintenance Dredging* as long as the mitigation measures identified in Exhibit B and Exhibit C of the Framework Agreement are implemented.
6. Lummi Nation Response to JARPAs for Short-term Elements of the Fairhaven Drydock Project. The Lummi Nation will respond within legal time frames to the Port's JARPA and the Port tenant's JARPA for the short-term elements only as described in paragraph 2(a) of the *Fairhaven Shipyard / New Dry-Dock Project*, which is Project 7 in Exhibit B of the Framework Agreement, and inform permitting agencies that the Nation does not oppose the permits for the short-term elements only as described in paragraph 2(a) of the *Fairhaven Shipyard / New Dry-Dock Project* as long as the mitigation measures identified in Exhibit B and Exhibit C of the Framework Agreement are implemented.
7. DMMP Pilot Study. The Lummi Nation will support the creation of a Dredge Material Management Program (DMMP) pilot study.

C. Mutual Responsibilities and Obligations of the Parties for Subsequent Implementation Agreements:

1. Comprehensive Agreement. The Port and the Lummi Nation will each continue to meet and negotiate in good faith to reach mutual understandings for a second implementation agreement, which will seek to address the broad goals described in the Framework Agreement. The Parties contemplate that successful negotiation and execution of a second implementation agreement will include a comprehensive agreement for the permitting of all the Port's projects on Exhibit B to the Framework Agreement, including the Whatcom Waterway Site, and will include a comprehensive agreement to address the projects' impacts on the Lummi Nation's Treaty rights to fish, hunt, and gather.

APPROVED by the Lummi Indian Business Council Resolution # 2009 - 121 (August 4, 2009).

LUMMI NATION

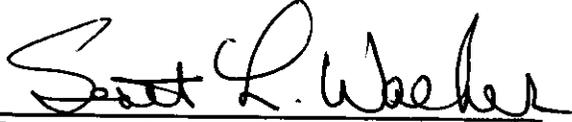
  
Chairman

Date

8/4/09

ADOPTED by the Port of Bellingham in an open public meeting on the 4<sup>th</sup> day of August, 2009.

**THE PORT OF BELLINGHAM**



*Scott L. Walker*  
*Commission President*

Date 8-4-2009