100% Remedial Design

Volume II – Part II
Permitting and Site Access Plan

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ABBREVIATIONS

Agreements	construction easement agreements
AOC4	fourth amendment to the Administrative Order on Consent
ARAR	Applicable or Relevant and Appropriate Requirement
BODR	*Basis of Design Report*
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
contractor	Remedial Action Contractor
EPA	U.S. Environmental Protection Agency
LDW	Lower Duwamish Waterway
MNR	monitored natural recovery
RAL	remedial action level
RAO	remedial action objective
RAWP	Remedial Action Work Plan
RD	remedial design
RM	river mile
SCO	sediment cleanup objective
SMA	sediment management area
U&A	Usual and Accustomed
WDNR	Washington Department of Natural Resources

1 Introduction

This *Permitting and Site Access Plan* describes permitting considerations and anticipated site access needs during construction of the cleanup remedy of the Lower Duwamish Waterway (LDW) upper reach.

The LDW Superfund Site extends 5 miles upstream from the southern tip of Harbor Island to just upstream of the Turning Basin, a federally authorized and maintained navigation feature consisting of an area where ship traffic can turn around. The LDW Superfund Site has been divided into three reaches (lower, middle, and upper) that are each undergoing remedial action on different timelines, with the upper reach being the first reach for which remedial action is being performed. Although each reach is being designed separately, some design overlap at the boundaries between reaches is necessary to transition remedial actions between reaches. The upper reach of the LDW extends from Duwamish Waterway Park (river mile [RM] 3.0) to the southern end of the LDW at RM 5.0 near the bridge on South 102nd Street (*Basis of Design Report* [BODR] Figures 2-1 and 2-2). The average width of the upper reach is 540 feet.

The banks of the LDW include public and private properties that support industrial and marine activities, as well as public access, utility corridors, street ends, and bridge crossings.

This *Permitting and Site Access Plan* is a requirement of the Final (100%) Remedial Design (RD) as identified in the fourth amendment to the Administrative Order on Consent (AOC4; EPA 2018) to do the following:

1. Identify the need for permits related to remedial activities not covered under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) on site. Pursuant to Section 121 of CERCLA (United States Code Title 42, Section 9621), no permits are required for on-site remedial actions. Only substantive requirements of these laws and implementing regulations apply. The U.S. Environmental Protection Agency (EPA) will determine substantive compliance with Applicable or Relevant and Appropriate Requirements (ARARs) in coordination with resource agencies, as EPA deems appropriate, using the supporting information presented in this section and related appendices.
2. Identify owners of private property where remedial action will take place that will require site access agreements and describe the general process for obtaining those agreements. The remedial action is composed of the following:
    a. Dredging[1]
    b. Engineered capping
    c. Partial dredge and engineered capping

[1] The dredging technology also includes residuals management cover placement to manage generated residuals and backfilling within defined habitat elevations or when needed to provide a stable post-construction condition.

d. Enhanced natural recovery, which includes placement of a thin layer (6 to 12 inches) of clean material
e. Application of area-specific cleanup technologies to contaminated sediment in underpier areas or areas with structural or access restrictions (e.g., in the vicinity of dolphins/pilings, bulkheads, and riprapped or engineered banks)
f. Implementation of monitored natural recovery (MNR) as follows:
    i. MNR to benthic sediment cleanup objectives (SCOs): Surface sediment contaminant concentrations are greater than benthic SCOs but below remedial action levels (RALs).
    ii. MNR below benthic SCOs: Surface sediment contaminant concentrations are below RALs and benthic SCOs but greater than human health-based cleanup levels.[2]

[2] The human health-based cleanup levels are applied as 95th upper confidence limit on the mean on a site-wide basis for Remedial Action Objective (RAO) 1 and an area-specific basis for RAO 2.

2 Permitting

CERCLA Section 121(e)(1)) states that for remedial actions conducted entirely on site, regulatory permits are not required, but site actions must be conducted in a manner that meets the substantive provisions of applicable regulatory requirements. This remedial action is under the jurisdiction of EPA Region 10, and according to CERCLA Section 121(d), it must comply with any ARARs, which are discussed in greater detail in the BODR.

Activities under this remedial action that are taking place on site do not require permits. Any activities necessary to be completed off site, however, will require appropriate permits. Should the Remedial Action Contractor (contractor) plan on conducting any off-site work (e.g., transloading of dredge materials and debris using off-site transload facilities outside of the LDW CERCLA site), the specifications require the contractor to provide and certify that it has obtained all necessary permits as part of its bid submittal. Any off-site facility that a contractor may propose for transloading operations will be required to have appropriate permits, such as the following:

- **Solid Waste Facility Permit:** In Washington State, this is issued by the local county where the transload facility is located (e.g., King County Public Health).
- **Industrial Stormwater General Permit:** In Washington State, this is issued by the Washington State Department of Ecology.

The contractor's selected landfill will require a Solid Waste Disposal Site Permit for the selected landfill issued by the relevant state agency (e.g., Oregon State Department of Environmental Quality for Waste Management's Columbia Ridge landfill in Arlington, Oregon). The landfill will also need to be operating in compliance with its permit as verified by the EPA Region 10 Off-Site Contact.

The contractor will be required to submit any off-site facility permits and verification of the landfill's compliance in its bid proposal. Permitting compliance for landfill(s) will need to be reverified periodically (e.g., each construction season).

3 Site Access

The LDW upper reach consists mostly of publicly owned aquatic land but includes some privately owned submerged portions of adjacent upland parcels.

The majority of the publicly owned land was formerly owned by Commercial Waterway District No. 1, which acquired the property to create the LDW beginning in 1911 (Port of Seattle 2009). The Port of Seattle is the successor to Commercial District Waterway No. 1 and has indicated that access agreements are not required for LDW upper reach remedial actions within its limits. Portions of the aquatic land south of the Turning Basin (RMs 4.7 to 5.0) are owned by the State of Washington (Washington Department of Natural Resources [WDNR]). There are also portions of aquatic land that are privately owned in the LDW upper reach.

To accomplish remedy construction, site access and/or temporary construction easement agreements are anticipated to be required with both WDNR[3] and private owners of aquatic lands in the LDW, as well as some of the property right holders of the adjacent upland properties.

During construction, it will be necessary to access a few private properties within the tidelands and uplands to conduct dredging and other remedial actions within the defined sediment management areas (SMAs). Access agreements will be required for specific construction actions, as well as temporary construction staging. The agreement types will include temporary site access agreements for actual construction work within private and public owned tidelands or adjacent uplands, temporary construction easements for upland construction staging, and permanent easements to allow long-term monitoring and maintenance. Prior to the commencement of construction, the Implementing Entity[4] will acquire access agreements with the impacted property owners listed as follows:

- **South Park Marina:** Uplands located adjacent to SMA 13
- **CenterPoint Properties:** Uplands located adjacent to SMAs 7 and 9
- **Container Properties:** Tidelands and uplands at and adjacent to SMA 5 and 6
- **WDNR:** Tidelands at SMA 1
- **The Boeing Company:** Tidelands and uplands at and adjacent to SMAs 1, 3, 4, 8, and 11

Outfalls within an SMA that may be impacted by construction and owned by any property owners listed previously will be included in the access agreements. Access agreements may need to include business interruption elements, depending upon the final Remedial Action Work Plan (RAWP) that

[3] WDNR is not the land owner but manages the land on behalf of the State of Washington and will provide a land use authorization through a right of entry agreement.

[4] AOC4 covers the design of the remedy for the upper reach. The remedial action for the upper reach will be conducted under a Consent Decree or similar agreement with EPA and a group of performing parties. This future group is referred to as the Implementing Entity and will be responsible for adhering to the terms of the Consent Decree.

will be prepared by the selected contractor and will inform the potential impact to business operations to the property owners and/or tenants.

It is anticipated that acquisition of required access agreements will be a multistep approach, as follows:

- The first phase is to negotiate with each given property owner/tenant the applicable type of agreement needed given the anticipated construction methods, expected duration of work, the associated access needs for the contractor, and the potential impacts to the owner's/tenant's operations. These negotiations would begin following 100% RD and during contractor procurement.
- Once the contractor has been selected, it will coordinate with the property owners to inform site access needs as the contractor develops its draft RAWP, including a draft construction schedule. Facilities may identify preferred periods of access (to reduce business impacts) during these negotiations. The Implementing Entity will negotiate draft access agreements with a draft exhibit detailing anticipated construction operations and needs.
- When the selected contractor's RAWP is completed and approved by the Owner and EPA, the access agreement exhibits will be revised and executed before construction begins at any affected facility. Because construction schedules are subject to change over the 3-year expected duration, final access agreements may be executed (or revised) as the construction schedule becomes firm at each affected facility.

Because the selected contractor will identify any off-site facilities or work that it will conduct as part of the RAWP submittal, the selected contractor will therefore be responsible for obtaining any access agreements needed for conducting any off-site work.

In addition to access agreements with WDNR and impacted property owners/tenants, construction activities have the potential to impact tribal Usual and Accustomed (U&A) fishing conducted by the Muckleshoot Indian Tribe and Suquamish Tribe. The Implementing Entity will coordinate and negotiate with the Muckleshoot Indian Tribe and Suquamish Tribe to establish communication procedures and compensation (if necessary) for potential impacts to U&A fishing.

4 References

EPA (U.S. Environmental Protection Agency), 2018. Administrative Order on Consent. Fourth Amendment. In the matter of: Lower Duwamish Waterway (Port of Seattle, City of Seattle, King County, The Boeing Company). July 9, 2018.

Port of Seattle, 2009. *Lower Duwamish River Habitat Restoration Plan: An Inventory of Port of Seattle Properties*. July 7, 2009.