More Thorough Explanations and Supporting Documents for EMEA's Unocal Cleanup Talking Points

Submit Comment(s) HERE. Comments are due by November 24.

Definitions of abbreviations used:

MTCA: The Model Toxics Control Act, Washington State's environmental cleanup law

WACs: The Washington Administrative Codes, the rules that enforce the Model Toxic Cleanup Act

DCA: Disproportionate Cost Analysis, the process Ecology uses to weigh costs and benefits in their selection of a preferred cleanup alternative

Tell Ecology that we want a new Disproportionate Cost Analysis performed and that we want more of the Unocal site permanently cleaned up by excavating contamination. Following are details that can help guide your comments.

Note: You can quote city documents or Model Toxics Control Act rules (WACs) as support, but most of your comment(s) should be unique to you. Comments that appear to be copied and pasted are not effective.
(You may need to click twice to view the hyperlinked reference documents.)

Suggested Talking Points:

1. **Chevron Corporation made the mess — they need to clean it up.** Unocal (Chevron) reaped significant financial gain from their use of the property as a bulk fuel terminal and an asphalt factory, and they created significant environmental damage in the process. Alternative 6 would pass on to a future owner the cost of removing this contamination for habitat restoration and estuary reconnection. The public, the City of Edmonds, and the Tulalip Tribes are not asking Chevron to restore the wetland or reconnect the estuary. They're asking that Chevron clean up the property to a level closer to how they found it, which will enable a future landowner to move forward without incurring additional cost.

2. **Potential future use of the property as a restored estuary reconnecting the Edmonds Marsh to Puget Sound should be included.**

Future use: Ecology has warned us that this argument is tricky because the Unocal property is currently in escrow with the Washington State Department of Transportation (WSDOT), not the City of Edmonds. This puts the city two owners away. However, the Washington Administrative Codes (WACs) do not specify that

planned or future uses are limited to the current landowner. In fact, WAC 173-340-351(6)(a) states: *Include any planned future uses of the site or any habitat restoration or resource recovery goals for the site*.

WAC 173-340-708(3) *Reasonable maximum exposure* states:

(a) Cleanup levels and remediation levels shall be based on estimates of current and future resource uses and reasonable maximum exposures expected to occur under both current and potential future site use conditions, as specified further in this chapter.

(b) The reasonable maximum exposure is defined as the highest exposure that is reasonably expected to occur at a site under current and potential future site use.

Documents supporting potential use for estuary reconnection, habitat restoration and salmon resource recovery: A Memorandum of Understanding (MOU) between WSDOT and the City of Edmonds and a state legislature budget line item give the City of Edmonds the first right of purchase for th*e intended use of the property to rehabilitate near-shore habitat for salmon and related species.* (MOU 2.8)

Additional documents confirming the city's intent are:

- City Resolution 1508 (1).pdf
- The 2022-2027 Parks Recreation and Open Space (PROS) Plan (page 116) (The link to the complete PROS Plan can be found here HERE.)
- The Parks Department 2024-2029 Capital Facilities and Capital Investment Plan (page 30) (The link to the complete CFP and CIP can be found HERE.)
- Memorandum of Understanding between WSDOT and the City of Edmonds

Letters from the Port of Edmonds and the Tulalip Tribes in support of the current NOAA Coastal Resiliency grant also support the potential future use of the site for restoration of the estuary and marsh requiring excavation of the Unocal fill and contamination. (See #5 below, Public Concern, for additional support of this future use.)

WSDOT links to future use: The existing marsh pipeline blocks salmon passage in violation of the 2013 federal culvert injunction that mandates *that the state remove* fish passage barriers. *The surface water channel replacing the pipeline would be on the Unocal site.* Since WSDOT holds the equitable title to the property, reconnection will be a required future use. *Also,* WSDOT proposed replacing the marsh pipeline with a surface water reconnection when planning use of the Unocal property for a ferry terminal. The terminal project has been abandoned but if WSDOT retains

ownership, plans would probably still include this reconnection. There is a detailed and specific habitat plan developed for this reconnection.

3. A more accurate cost-benefit calculation is needed.

Currently, permanently removing all contamination through excavation (Alternative 4) is rated only 12% more beneficial than capping and covering it (Alternative 6). Ecology guidance has confirmed that the cost analysis needs to consider *both quantitative and qualitative estimates and the use of best professional judgment*. The extensive benefits of estuary restoration, wetland expansion, and salmon resource recovery should be included in the analysis of benefits.
Concise Explanatory Statement: Chapter 173-340 WAC (pages 119-120)

When considering future land and resource uses, Alternative 6 is not protective, permanent, or effective in the long term. The benefit scores for Alternative 6 should be adjusted to reflect this.

A DCA comparison method should be used that does not overemphasize cost, that increases the weight given to benefits, and that includes the future costs of engineered covers.

WAC 173-340 states that cost should be "proportionate" to environmental protections. Ecology interprets this as equal, but Webster's Dictionary defines proportion as "The relationship of a part to a whole or to another part as to magnitude, quantity, or degree: ratio." Ecology is not correct that cost is an equal consideration to the sum of all other criteria. Cost should be a ratio to other factors. If cost is proportionate to environmental protection, a weighting of 20% or 30% would be a more appropriate interpretation of the WAC. As interpreted by Ecology, nearly all cleanup plans approve simply covering up the contamination and leaving it in place. This is not the intent of the MTCA.

4. Environmental hazards, especially from climate change and sea level rise, are required to be included in cleanup decision making.

State law and Ecology guidance say to *prevent or minimize future as well as present release of hazardous substances into the environment*. Permanent solutions (Alternative 4) are needed to prevent potential groundwater contamination due to sea level rise and to prevent flood damage to caps and covers. The location of the Unocal property adjacent to Puget Sound and in a seismic hazard zone also supports removing rather than covering contamination. Ecology's current preferred Alternative 6 does not adequately consider the environmental hazards of the Unocal site.

Sea level rise and stormwater flooding will increase the risk that engineered covers will fail in the southwest corner of the site where flood flows can pass under the BNSF railroad bridges before returning to Puget Sound. The covers are also at risk from waves that will overtop the railroad tracks in the future.

Sea level rise will increase groundwater levels, and flood waters will more frequently inundate the Unocal site. These factors may mobilize contamination and allow it to move toward Willow Creek and Puget Sound through groundwater.

WAC-173-340-360(3)(a)(iv) *General Requirements* states: A *cleanup action must prevent or minimize present and future releases and migration of hazardous substances in the environment*

WAC 173-340-360 (3) (a) (v) *General Requirements* states: *A cleanup action must provide resilience to climate change impacts that have a high likelihood of occurring and severely compromising its long-term effectiveness*

Ecology's guidance about climate change and sea level rise:

- *Ecology believes that climate resilience should be separated out from the threshold protectiveness requirement. Specifying that a cleanup action must be resilient to climate change impacts that have a high likelihood of occurring and severely compromising the action's long-term effectiveness is critical in ensuring the long-term effectiveness and protectiveness of cleanup actions.*
  Concise Explanatory Statement: Chapter 173-340 WAC (Pages 51-53)
- *Ecology conducted a vulnerability assessment of the state's cleanup sites to understand the types of sites most vulnerable to climate change impacts. We (Ecology) found that sea level rise poses the highest potential risk to sediment and upland cleanup sites in or near marine and tidally influenced waterbodies.* This description accurately describes the Unocal site and supports the need for a climate vulnerability assessment prior to selecting the final cleanup plan.
  Sustainable Remediation: Climate Change Resilience and Green Remediation (page 1 of 170)

5. *Public Concern* has not been properly weighted.

Chevron lists noise, traffic, short- and long-term risks, and timeframe as the most common community concerns. They assert that complete excavation, Alternative 4, will be most disruptive to the public. This is a flawed assessment of the public's concern about the Unocal cleanup situation. Of the approximately one hundred people who attended Ecology's September 2024 public meeting, no one mentioned these concerns. Instead, the primary concern expressed was that cleanup be sufficient to make reconnecting the Edmonds Marsh to Puget Sound feasible.

(The link to Chevron's Revised Draft Feasibility Study is on THIS PAGE. Go to page 6.6.)

6. A cleanup plan between Alternative 4, complete excavation, and Alternative 6, no excavation, should be considered.

Excavating contamination in the areas where the estuary restoration channel will be located and capping and covering contamination elsewhere would better address future land use, public and Tribal concerns, and the environmental hazards of the site at a cost much closer to Alternative 6. Cost is a significant factor in weighing alternatives, and the MTCA cleanup plan selection process favors the adoption of the least expensive alternative if the benefits are deemed to be close and the costs are widely divergent. By submitting Alternative 4 with an estimated cost that is 10 times more expensive than Alternative 6, Chevron is almost forcing Ecology to accept Alternative 6 as the preferred option even though it is less permanent, less protective, and less effective in the long term.

See two possible alternatives HERE.

7. Tribal interests and rights need to be considered.

Ecology states that they have notified tribes of the opportunity to comment but according to the amended MTCA rules, that is not sufficient. The updates require Ecology to *consider the rights and interests* of Indian tribes when evaluating cleanup action alternatives in the feasibility study and in the cost analysis. There is *no mention of these* in the current feasibility study. The Unocal property was used traditionally by the Tulalip tribes as a "usual and accustomed" gathering and fishing place. Tribal concerns about depleted salmon populations are well known, and their interest in a cleanup level that facilitates reconnecting the Edmonds Marsh to Puget Sound to create a nearshore estuary to aid in salmon recovery has been affirmed by their letters of support for the city's MOU with WSDOT and for the current NOAA Coastal Resiliency grant. These interests and rights are long standing and should be assumed and included in Ecology's and Chevron's analyses.

WAC 173-340-620 (3) and (4)

8. Updated soil samples are needed before the revised feasibility study is completed.

Most soil samples were collected during excavations in 2001, 2003, and 2008. Since the site contaminants have been subject to natural attenuation over the intervening years, there may be substantial changes to the number of areas that do not meet cleanup limits. This new information could have an impact on the ranking of the benefits of each proposed remedial action alternative and the cost of their

implementation. If new remedial action alternatives *combining* engineered covers with excavation are considered, updated soil sampling will be particularly important. The disproportionate cost analysis will change based on how much of the site remains contaminated. The results of the additional soil sampling that is planned need to be incorporated into the Ecology's updated feasibility study.