



U. S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Damage Assessment and Restoration Center Northwest
7600 Sand Point Way NE, Bldg #1
Seattle, WA 98115-0070

November 24, 2009

Bainbridge Island City Council
280 Madison AV
Bainbridge Island, WA 98110

RE: Elliott Bay Trustee Council Funding for City of Bainbridge Island restoration

Dear Bainbridge Island City Council:

I am writing on behalf of the Elliott Bay Trustee Council (Trustees) to seek clarification from the City of Bainbridge Island (City) regarding the status of three habitat restoration projects for which the City received natural resource damage assessment (NRDA) settlement funds. The projects in question are the Strawberry Plant Park Shoreline Restoration Project, the Pritchard Park West Rip-Rap Shoreline Restoration Project, and the Pritchard Park East Bluff Shoreline Restoration Project. These projects were among a number of different habitat restoration projects that were proposed by the City to the Trustees for funding from the NRDA settlement funds, and which were chosen from among all potential projects identified to the Trustees by the City and others for further consideration including provision of funds for site assessment and other preliminary tasks. While the City Council deliberates on the next steps for these projects, the Trustees wish to reiterate and make certain that the City Council is fully aware of the circumstances under which these proposed projects are to be funded and the specific limitations associated with NRDA settlement funds.

The Trustees have the responsibility of restoring natural resources injured by releases of hazardous substances from the Wyckoff Facility in Eagle Harbor and the PSR site in Elliott Bay with the NRDA funds received out of the bankruptcy settlement. The Trustees have discretion as to how the settlement funds are apportioned between the two sites but have apportioned the funds equally for planning purposes. With respect to injuries caused by contamination from the Wyckoff facility, the Trustees evaluated the types of projects that would benefit the injured resources and determined that restoration of eelgrass, marsh, mudflat, and forage fish spawning habitats would provide the most benefits. We were very pleased when we were first contacted by the City in 2006 about the possibility of using NRDA funds for restoration projects on City property because we believed that a partnership between the City and Trustees could help to maximize the amount of restoration that could be achieved with the NRDA settlement. This is especially true for projects for which the City sought NRDA funds to serve as match for Salmon Recovery Funding Board (SRFB) funds.

After evaluating a number of different project proposals, the Trustees chose four projects which were expected to be constructed in 2010 or earlier for further evaluation and



NRDA funds have been expended on each of these projects. The Trustees also provided some NRDA funds for investigations at Blakely Harbor, recognizing its' great restoration potential but with the understanding that a much longer timeline will be required until any restoration project could move forward at that location. When decisions are made about what to do at that property, the Trustees may consider providing funds for restoration at Blakely Harbor, if NRDA settlement funds remain available.

At this time, the Trustees believe that there is sufficient funding to fully fund the Milwaukee Dock Eelgrass Project, and that necessary funding is available for the three City projects that were projected for construction in 2010 as described below. This funding may be in jeopardy, however, if (1) designs for these projects are modified from the designs presented to the Trustees for our consideration for funding, (2) delays occur in the implementation of these projects, and/or (3) a loss of SRFB grants occurs. Any one of these circumstances may require the Trustees to re-evaluate whether these projects will be funded using NRDA settlement funds and may give rise to further consideration of other potential projects.

The three City projects that the Trustees had anticipated would be constructed by 2010 are discussed further below.

Strawberry Plant Park Shoreline Restoration Project

The Trustees provided \$33,960 for site assessment activities for the Strawberry Plant Park Shoreline Restoration Project (SPP) and agreed to provide the match (\$315,443) for a SRFB grant for project construction. The decision to use NRDA settlement funds for this project was based on the project concept approved by the City Council and the Bainbridge Island Metropolitan Park and Recreation District Board of Commissioners on February 24, 2009. Although this project concept had less restoration than the Trustees had expected, it was deemed a reasonable compromise between habitat and human use that the Trustees supported because of its consistency with the overall goals for the restoration effort and the initial evaluation of the project. Since that time, the Trustees expended considerable time and effort to fulfill requirements necessary to provide the funding for the project. It is our understanding that the City expended additional funds on archaeological investigations that had been more involved than had been anticipated, and that the City intended to seek recovery of these additional costs from the Trustees. The Trustees will consider providing those funds to the City as well as the construction match to the SRFB grant for the project as currently designed. The project has all the required permits and could still be constructed during the fish window in 2010, assuming that City Council timely decides to move ahead with the project as proposed.

If the City intends to change the SPP project design, the Trustees will need to re-evaluate the project to determine whether it is still appropriate to provide the match for a SRFB construction grant for the modified project, assuming the SRFB funds are available for the modified project. Any change in the project design will likely delay the project until at least 2011, because the existing permits and other

regulatory documents would need to be modified. The Trustees will not provide NRDA settlement funds to the City for any additional costs related to developing new designs, conducting additional investigations, or modifying existing or obtaining new permits than those already obtained.

Pritchard Park East Bluff Shoreline Restoration Project

The Trustees have provided \$12,442 to the City for site assessment work, and an additional \$36,441 for design development, environmental review and permitting costs for the Pritchard Park East Bluff (PPEB) project. The project has also received SRFB funds for site assessment and design work and will be receiving additional SRFB funds for construction. The Trustees were informed by the City that \$185,000 in additional NRDA funds will be sought for PPEB project construction which will serve as the match for the SRFB construction grant. The Trustees anticipate that NRDA settlement funds will be approved for construction provided that the design is consistent with the concept as originally presented to the Trustees. However, the City informed the Trustees that all design work on this project has been stopped at this time and that construction is not likely until 2011. The Trustees are concerned that the SRFB funds for construction could be withdrawn due to project delays, such as completing a design and initiating the permit process. In the event that the SRFB construction funding for this project is lost, NRDA settlement funds may not be available as a substitute for those lost funds. To remove the risk of losing SRFB construction funds for this project, the Trustees urge the City to resume work on project design and permitting using the funds already provided by the Trustees.

Pritchard Park West Rip-Rap Shoreline Restoration Project

To date, the Trustees have provided a total of \$134,300 NRDA settlement funds for site assessment, design development, environmental review, and permitting for the Pritchard Park West Rip-Rap (PPW) Shoreline Restoration Project. The Trustees understand that the City intends to seek an additional estimated \$345,845 in NRDA settlement funds for project construction. At this time, the Trustees anticipate that funding for construction will likely be approved based on the current 30% design. Environmental review and permitting is currently underway and the project is anticipated to be constructed in 2010. No SRFB funds have been granted for this project. If the City does not proceed with the PPEB project in 2010, the Trustees will redirect unspent NRDA funds provided to the City for this project toward the construction of the PPW project.

The Trustees remain interested in partnering with the City and SRFB on restoration projects, but need to have a better understanding about the City's commitment to such a partnership. While the Trustees continue to believe that our restoration goals can best be met by partnering with the City and SRFB on the projects discussed above, we have an obligation to re-assess our approach as circumstances change to ensure that this partnership will best meet these goals. One important goal for approving and disbursing NRDA settlement funds is to maximize the amount of on-the-ground restoration achieved with the available funds and minimize the amount of settlement funds that are expended in administrative and process costs. In order to foster a strong partnership relationship

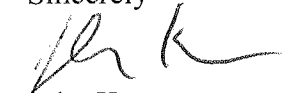
with the City that recognizes the limitations associated with NRDA settlement funds, the Trustees are requesting that the City provide the Trustees a timeline that provides a commitment as to when the City intends to decide whether to move forward with the current SPP project design and the design and development of the PPEB project. We respectfully request a response by December 11, 2009 explaining the City's position on these matters.

I will be unavailable the month of December, and Rich Brooks will serve as the point of contact for the Trustee Council. Please send your response to Rich at the following address:

Rich Brooks
Suquamish Tribe
Fisheries Department
P.O. Box 498
Suquamish, WA 98392-0498

If you have any questions, feel free to contact Rich at (360)-394-8442.

Sincerely



John Kern

cc: Elliott Bay Trustee Council
Lee Walton, City Manager
Kathy Cook, Planning Director
Libby Hudson, Planning Manager