



Arianne Fernandez

Toxics Cleanup Program

Washington Department of Ecology

P.O. Box 47600

Olympia, WA 98504-7600

April 7 2020

Regarding the: FEBRUARY 2020 MARCH POINT DRAFT CLEANUP ACTION PLAN

Draft Consent Decree, and Draft State Environmental Protection Act (SEPA) Mitigated Determination of Non-Significance for the March Point Landfill

Dear Ms. Fernandez

Thank you for the opportunity to comment on the Draft Cleanup Action Plan (DCAP) for March Point. We appreciate that the goal of this project is to make the shorelines and waters of Puget Sound, and particularly Padilla Bay, cleaner. Current and future generations of people and wildlife will benefit from less pollution in Puget Sound.

Skagit Land Trust (SLT) is a nonprofit and an accredited land trust. The Trust was founded in 1992 to help protect the natural lands, open space and wildlife habitat of Skagit County for the benefit of our community and as a legacy for future generations. Skagit Land Trust has grown to become the preeminent land conservation organization in the Skagit with strong local support. The nine staff, 18 board members and 400 active volunteers are joined by approximately 2,000 individual and business supporters to protect the most important and beloved lands throughout the county. The amount of land we protect has grown to almost 10,000 acres including over 44 miles of shoreline.

Skagit Land Trust owns land immediately adjacent to the March Point cleanup site. This land is occupied by the March Point Heronry. We appreciate that the WA Department of Ecology reached out to us early in the process to better understand this heronry, its annual cycle, and how the March Point Land Fill Cleanup can be carried out without disturbing the herons during their breeding and nesting season.

### The March Point Heronry

With over 650 active nests, this is by far the largest heron-nesting site in the Salish Sea and along the west coast of the United States. The herons use this forested nesting habitat, called a heronry, from mid-February until mid-August and then disperse for the remainder of the year. A typical heron brood has two-to-four chicks, which means that up to 3900 adults and chicks may utilize this small area in a nesting season. Simply put, there is no other place like it. The March Point Heronry's size provides the genetic diversity required to sustain heron populations throughout Puget Sound.

Great Blue Herons are colonial breeders, building nests in mature coastal forests near marine intertidal habitat for foraging, particularly eelgrass and estuaries. Historically, many small colonies of Great Blue Herons were found throughout the forested marine shoreline of Puget Sound. With the loss of so much of their nesting habitat, many of these small colonies combined in the last best places to form mega-colonies. Mega-colonies have greater breeding success than smaller colonies. However, disturbance of these mega-heronries also means that terminated nesting attempts by the colony can be catastrophic. Many of the mega-colonies along the west coast of the United States have abandoned. Disturbance occurs when large or novel events occur or when human disturbance leads to increased predation, lower breeding success, nest failure and less efficient foraging. In addition to impacts at the nesting site, herons whose foraging is interrupted cannot supply their chicks with the calories needed for optimum growth.

The success of the March Point Heronry as nesting habitat is because it is situated adjacent to the federally and state-protected waters of the Padilla Bay National Estuarine Research Reserve that supply an excellent marine food source; the presence of a small but intact and relatively hard to access mature coastal forest of a type that has disappeared throughout Puget Sound over the past 100 years; and the presence of a bald eagle nest, which protects the herons from harassment by non-resident eagles. This is not a place that can be recreated if lost or diminished. It is critical that the Department of Ecology require robust measures to protect the March Point Heronry.

### March Point Cleanup Project Planning Considerations for Heronry

Unfortunately, there is an absence of information in the documents provided for review on how the Cleanup Project will impact the heronry, and steps to mitigate this. Nor is there a probable sequencing of Cleanup Project steps. This limits our ability to provide targeted input at this time. Although we have had several meetings with the Department of Ecology over the past few years

to discuss this project, we do not see in these documents the information we have shared on the best available science concerning heronry management alongside construction projects.

**Because there is not yet a Heronry Management Plan developed for the March Point Cleanup, nor a detailed Cleanup Project Plan, our comments are directed for considerations when making these plans. We request that there be opportunity for further input from the public as these plans are being developed and upon their completion.**

The existing City of Anacortes Critical Area Regulations and the draft updated code being considered for adoption, state that the Great Blue Heron nesting site at March Point is to be protected from disturbing activities during the herons' breeding and nesting season. Based on the advice of heron biologists such as Ann Eissinger who has studied this heronry for decades, Washington Fish and Wildlife protocols, and our own experience managing this heronry, we know that an important aspect of project planning is to ensure that activities that have potential to disturb the heronry are avoided, eliminated or reduced.

Specifically, the noise level at the edge of the heronry during any point of construction should be no greater than what the herons currently experience during the nesting season. Although the draft Cleanup Action Plan states that disturbance to the heron rookery will be limited through techniques like "noise reduction", managing noises alone is likely not adequate for all project activities, especially those closest to the heronry itself. Activities where noise cannot be mitigated adequately should happen outside of the breeding and nesting season. Similarly, actions that are in the direct line of sight with nesting herons should be carefully orchestrated so as not to disturb the herons. Activities that are deemed appropriate to happen during the breeding and nesting season should have monitoring plans established with directions to cease work if the herons are disturbed. Additionally, the March Point herons forage in and along Padilla Bay adjacent to the land fill site throughout the breeding and nesting season. Plans must consider the impact of cleanup activities on these foraging areas.

Following are some of the measures we suggest be part of the Heronry Management Plan:

- A qualified wildlife biologist with experience in heronries in Puget Sound should be hired to develop the Heronry Management Plan with the PLP's.
- A noise investigation report should be required as part of the Habitat Management Plan and should be done prior to cleanup plans and timelines being finalized. This report should document the current ambient noise levels at the eastern and northeastern edge of the heronry during the nesting season in February (when leaves are off the trees) and June (when leaves are on the trees). The study should estimate noise levels for all project activities and locations on the project site. Once this study is completed, project activities that generate noise will generally fall into three categories:
  - Construction activities with potential to impact the heronry. Activities expected to go above the 2020/21 documented ambient noise levels at the edge of the heronry, should have proven mitigation measures to bring noise levels below that threshold

or be scheduled outside of the key nesting season. This may mean these project activities need to proceed in stages or in the non-nesting season.

- Activities that are deemed by a qualified wildlife biologist to not impact the heronry may be allowed to proceed at certain times during the nesting season but should be subject to monitoring protocols and “stop work” signals. Monitoring protocols should be developed and undertaken by a qualified professional.
  - For activities that may impact the heronry in the years following completion of the Cleanup itself, mitigation plans should be created to handle any adverse noise impacts.
- No blasting should happen during any part of the breeding and nesting season.
  - Construction vehicles should arrive from the north side of the project area, not from the southern side since this part of South March Point Road is directly beneath the heronry.
  - Any road upgrade activity should take place in the non-nesting season because of the noise involved.
  - Construction entry and exit, parking and staging, should happen on the northern side of the March Point Land Fill property, as far from the heronry as possible.
  - Any activities with the Cleanup plan should be limited to daylight hours. Temporary and permanent lighting should be covered and down-shielded.
  - Construction best management practices should be utilized to minimize erosion and sedimentation. Dust control measures should be employed.
  - Heron nests should receive the greatest visual screening possible from all project disturbances. This is particularly important in the early months when project activities will be in the nesting herons’ line-of-sight due to lack of seasonal vegetation. Significant visual actions should be mitigated through project timing and sequencing.
  - Trees along South March Point Road which are outside of the Cleanup core area are used for roosting and as a source of twigs for nest building. Most importantly, these trees help buffer the heronry visually. Because herons seem most sensitive to actions in their line of sight, screening trees in this area should be maintained if possible.
  - Because herons use the shoreline and intertidal muds flats beside the Cleanup area for foraging, the Heronry Management Plan must address disturbance of foraging herons.
  - Herons also use the shoreline surrounding the Outer Lagoon for staging, a gathering of herons in large numbers for a week or two before re-entering the colony for breeding and nest building. The Heronry Management Plan should address disturbance of staging herons.
  - On-going testing for contaminants of the Inner Lagoon should continue throughout the Cleanup and at regular intervals into the far distant future. Plans should be made for locating the source of contamination and removal of any identified contaminants.
  - Because there is a water connection between the Inner and Outer Lagoons, the Outer Lagoon should also be tested for contaminants throughout the Cleanup and into the far distant future at regular intervals.
  - All emissions and possible transport of airborne particulates should comply with controls to meet Northwest Clean Air Standards.

Skagit Land Trust understands that the PLPs will develop the Habitat Management Plan under the guidance of the City of Anacortes and in consultation with the City of Anacortes, the Washington Department of Fish and Wildlife, the Swinomish Tribe, and local experts who will guide Ecology's review and approval of the plan.

**Skagit Land Trust requests that:**

- **We be allowed to review the details of the Cleanup Project plan and timeline before it is finalized so that we are informed of specific actions that may affect breeding and nesting herons;**
- **We be allowed to review the Habitat Management Plan for the March Point Heronry prior to Ecology's approval and permits being issued;**
- **We be informed of any remedial actions that are proposed once the Cleanup Plan and Heronry Management Plan has been approved.**

We also request that the comment period for the Draft Consent Decree, and Draft State Environmental Protection Act (SEPA) Mitigated Determination of Non-Significance for the March Point Landfill be extended for several weeks due to COVID-19 related issues. This will enable broad input.

Thank you for allowing us to provide input and for your attention to The March Point Heronry.

Sincerely

A handwritten signature in cursive script that reads "Molly D." followed by a horizontal line.

Molly Doran

Skagit Land Trust, Executive Director

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Mount Vernon, WA 98273