



# **MTCA 30:** An Intimate Look at Three Decades of Washington's Contaminated Site Cleanup Law

**December 10, 2019** | **Seattle, WA**

Beveridge  
& Diamond





# Welcome Remarks

**Loren Dunn**, Principal, Beveridge & Diamond

**Scott Fulton**, President, Environmental Law Institute (via video)

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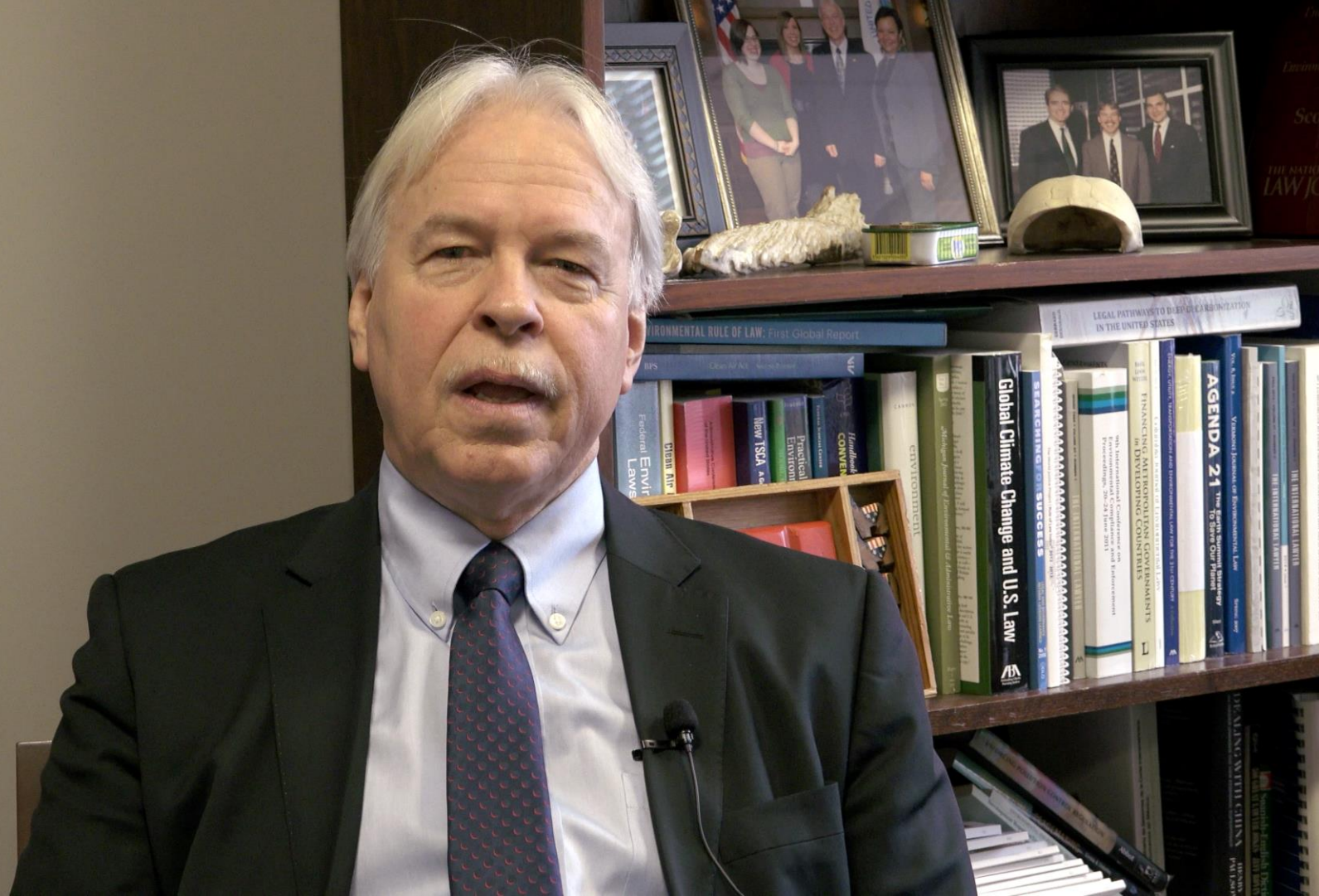


# Welcome to MTCA 30

- For those attending in-person today, we invite everyone to join us across the street at the Hilton Seattle after the seminar for a networking reception with drinks and hors d'oeuvres
- All virtual attendees received a link to view the event materials this morning via e-mail. The link will be sent to all participants following the seminar.
- Time permitting, we will take questions from the audience. If we aren't able to address your question, please feel free to follow-up with us during the reception or via email
  - Virtual attendees: If you would like to ask a question, please do so using the Webex chat function or by emailing Alexa Curto, [acurto@bdlaw.com](mailto:acurto@bdlaw.com)







# INITIATIVE MEASURE 97

TO THE LEGISLATURE

Note: the ballot title and explanatory statement were written by the Attorney General as required by law. The complete text of Initiative Measure 97 begins on page 18.

## Statement for

### INITIATIVE 97 MAKES THE POLLUTERS PAY

Polluters should pay to clean up their own mess. Initiative 97 would make them do that. *Polluters are forced to clean up their wastes.* If they don't, tough fines and criminal penalties will follow.

### TOUGH LAWS. TOUGH FINES. NO DEALS.

Nearly every week brings news of new toxic catastrophes. *One out of six people who live in Washington could be affected by toxics.* Families around Puget Sound, in Spokane, and in Central Washington *cannot drink their water* because of chemical pollution. Washington is the second worst state west of the Mississippi for hazardous waste sites. Seeping landfills, pesticides, and petroleum products can cause cancer and birth defects. Seniors may be particularly vulnerable. The need for a tough toxics cleanup law now is clear.

### THE PEOPLE'S INITIATIVE

For years irresponsible polluters fought hard to avoid a tough law. An initiative was written after polluters blocked legislation to clean up toxic waste. Thousands of volunteers worked very hard to give us the chance to clean up toxics now. *Across the state over 200,000 people signed petitions. Now you have your chance to send a strong message to polluters: You want a tough law, with tough fines and no deals.*

### DON'T LET BIG CORPORATE POLLUTERS BUY THE ELECTION

Big oil and chemical companies will spend \$1.5 million dollars to convince you to vote against Initiative 97. Don't

## Official Ballot Title:

Shall a hazardous waste cleanup program, partially funded by a 7/10 of 1% tax on hazardous substances, be enacted?

## The law as it now exists:

State law enacted in October, 1987 provides for a hazardous waste cleanup program in the State of Washington. The primary responsibility for the cleanup of hazardous waste sites is imposed upon the owner or operator of the site, the person responsible for

be fooled. *Initiative 97 is the stronger toxic cleanup program which will make our environment cleaner and safer, for today and tomorrow, for our children and grandchildren.*

## Rebuttal of Statement against

- *Strong citizens' initiative eliminates polluters' loopholes.* It forces polluters to clean up their own mess. No deals. No delays. No watered-down health standards. I-97 has been carefully reviewed and supported by more than 70 groups, dozens of legislators and signed by 215,000 people.
- *Cleanups, not lawsuits.* I-97 makes cleanups happen now—not later. The initiative prohibits polluters from filing lawsuits that delay cleanups.
- *More money for farmers, small businesses and recycling* – to clean up our drinking water now and for the future.

### Voters Pamphlet Statement Prepared by:

JOLENE UNSOELD, State Representative; JANICE NIEMI, State Senator; DAVID BRICKLIN, President, Washington Environmental Council.

Advisory Committee: THE REVEREND DR. WILLIAM B. CATE, President, Church Council of Greater Seattle; LAWRENCE KENNEY, President, Washington State Labor Council; HENRY BURTON, Chair, Cascade Chapter Sierra Club; WENDY A. WENDLANDT, Executive Director, Washington Public Interest Research Group; WANDA HAAS, President, League of Women Voters of Washington.

the disposal or release, and the generator or transporter of the waste. The strict liability under the law does not apply to persons who, without negligence and in accordance with State and federal law, apply pesticides or fertilizers for the purpose of growing any crops, trees, nursery plants, or farm animals.

The State Department of Ecology is empowered to investigate, adopt rules, establish standards, classify substances as hazardous substances, require remedial actions, establish priorities for site cleanups, promote hazardous waste reduction and recycling, and provide educational programs. A scientific advisory board is to advise the Department.

The person legally responsible for the cleanup of a hazardous waste site must be given a reasonable opportunity by the Department of Ecology to develop a remedial program, meeting the Department's standards for the cleanup of the site. The Department, before approving such plan and settlement, must give an opportunity for public comment. The plan, when approved, must be filed with the superior court; then there is a thirty-day waiting period for public comment. As part of an approved cleanup plan, the Department can defray some of the costs, agree not to bring suit to compel cleanup in excess of the plan, and certify the completion of the cleanup. Such approved cleanup programs are exempted from various permits that would otherwise be required by law.

The Department of Ecology can, for failure to comply with a Department order, seek from the court civil penalties of up to three times the remedial costs incurred by the State and penalties of up to \$10,000 per day. The State's costs to clean up a hazardous waste site is a debt secured by a lien on the real property. The Department's orders are subject to review in court.

Private persons can sue the Department of Ecology to compel it to perform any nondiscretionary duty under this law. Private persons can also sue to compel potentially liable persons to comply with the law as well as other common-law and statutory actions. Cleanup contractors are not liable unless they are negligent or grossly negligent.

Owners who know that a significant quantity of hazardous materials has been released or spilled on their property must place a notice of that fact in the county real estate records, and must also notify the State Department of Ecology. When the Department of Ecology discovers such a release or spill, the Department is required to place a notice of such fact in the county real estate records.

The Department of Agriculture may dispose of unusable pesticides collected from licensed pesticide operators. And the Department shall implement a pesticide waste disposal program. The Department of Ecology is to adopt rules allowing the Department to

(continued on page 16.)

## Statement against

### I-97: FLAWED INITIATIVE MAKES FOR BAD LAW

Initiative 97 is full of good intentions, but contains serious flaws that will hurt many groups in Washington. The Initiative's purpose was to encourage the legislature to act. It is not good law and fails to include many important public programs, like household hazardous waste collection.

The Initiative simply did not go through the same scrutiny and public input that the legislature's law did. The legislature worked for three years to create a law that is fair to everyone – 97B.

### I-97: DELAYS AND LAWSUITS, NOT CLEANUPS

The Initiative will stop the cleanups that are already taking place under 97B, the new law. Long delays will result and costs will escalate. The Initiative will result in lawsuits, not cleanups.

### I-97: HURTS TAXPAYERS, AGRICULTURE, SMALL BUSINESSES

The Association of Washington Cities endorses Legislative Alternative 97B, not the Initiative. Initiative 97 will result in outrageous public cleanup costs with no added protection of public health or the environment.

### I-97: LIKE THE FEDERAL SUPERFUND, A 99% FAILURE

I-97 is patterned after the federal superfund law that has produced eight years of costly court battles and virtually no cleanup. Why replace a law that is working and resulting in cleanups (97B), with an initiative (Initiative 97) patterned after a federal failure?

## Rebuttal of Statement for

Don't fall for I-97, a toxic scare campaign imported from California and financed by out-of-staters. *The Seattle Times* charges I-97 backers with "demagoguery and phony one-liners," such as "make the polluters pay." 97B is the current law; it's already making the polluters pay and cleaning up toxics now. I-97 would overthrow the law and delay cleanups. Out-of-staters are funding a toxic scare campaign to overthrow the law. Keep the best law, vote YES 97B.

For more information, call (206) 448-4972.

### Voters Pamphlet Statement Prepared by:

MIKE KREIDLER, State Senator; CLYDE BALLARD, State Representative; DAVE STURDEVANT, Clark County Commissioner.

Advisory Committee: DAN EVANS, U.S. Senator; VICKI MCNEILL, President, Association of Washington Cities; RAY HILL, Master, Washington State Grange; ANDREA BEATTY RINKER, former Director, Department of Ecology; GILBERT S. OMENN, M.D., Ph.D., Chair, Scientific Advisory Board, Department of Ecology.

# Toxics Cleanup Program Priorities and Initiatives

MTCA 30

Seattle

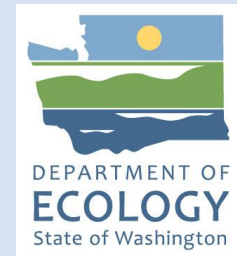
December 10, 2019

**James J Pendowski**

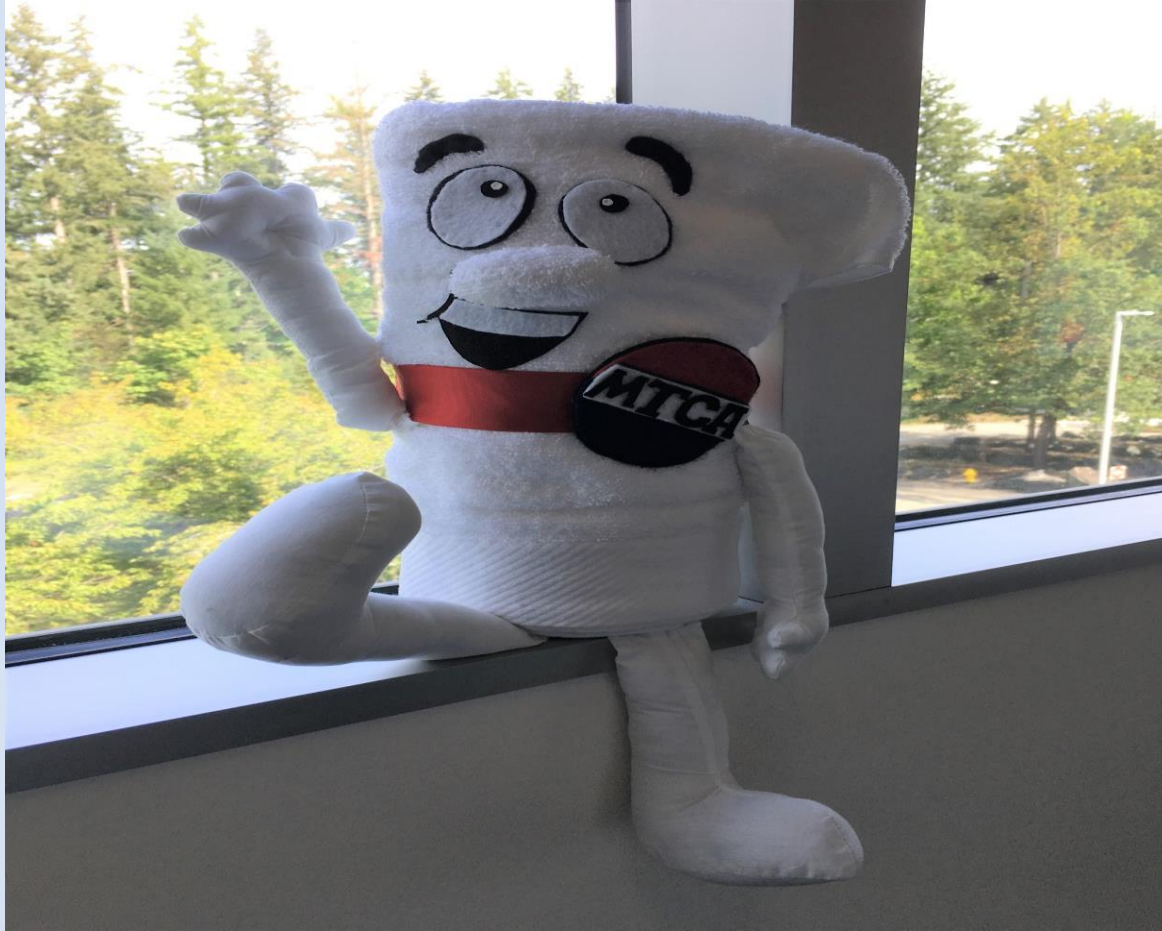
Program Manager

Toxics Cleanup Program

Washington State Department of Ecology







MTCA gave us the authority and funding to cleanup  
contaminated sites

# Total TCP Capital Appropriation History

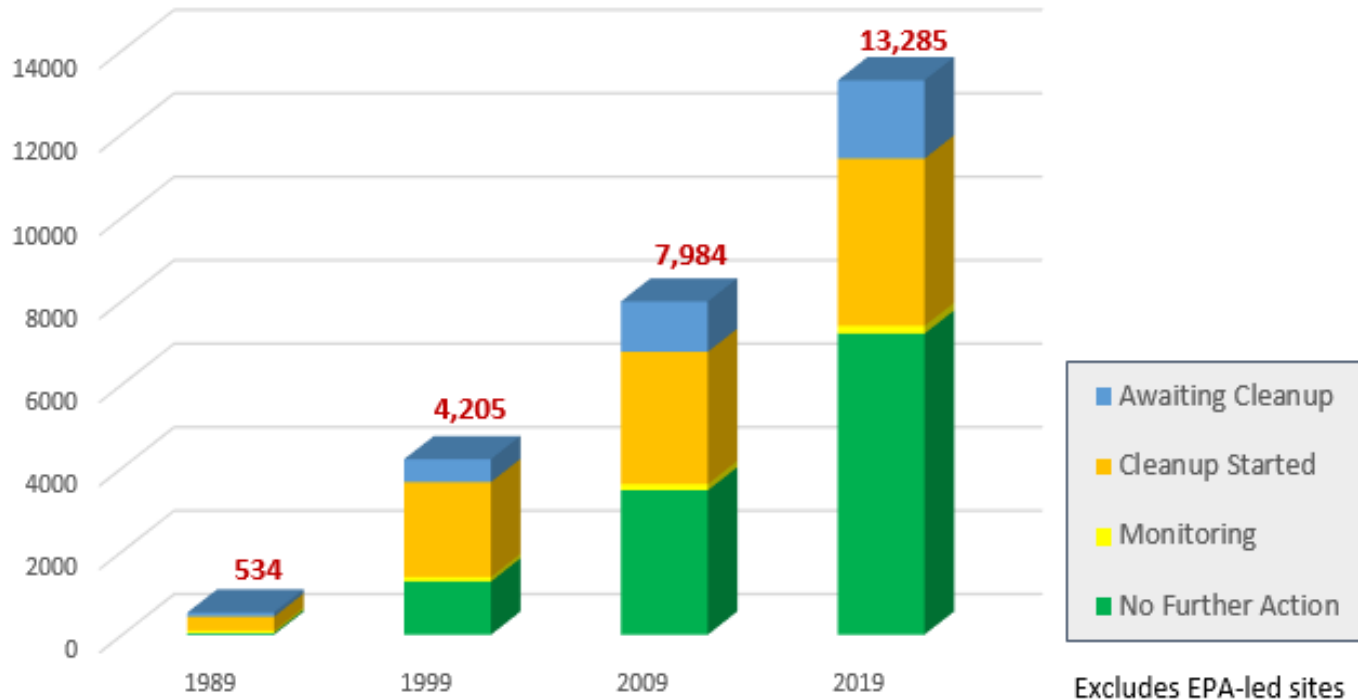


■ Total Remedial Action  
Grants



## The Legacy of Business and Industry: Much Larger Than We Knew

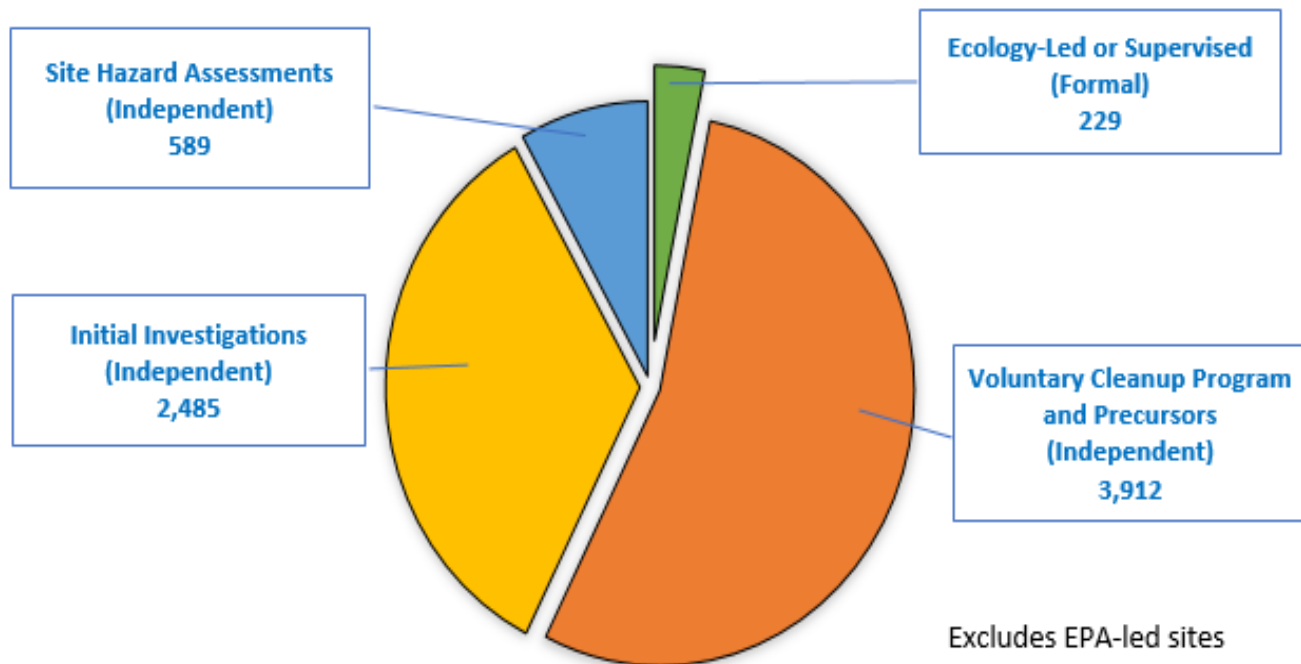
MTCA Cleanup Sites, 1989–2019



The world we envisioned in the beginning is not  
what we have now

## Most Cleanups Are Independent - with Help from Ecology

7,215 Cleanups (NFAs) as of December 1, 2019



# Environmental Good - Pasco Landfill



FEB 21 2002

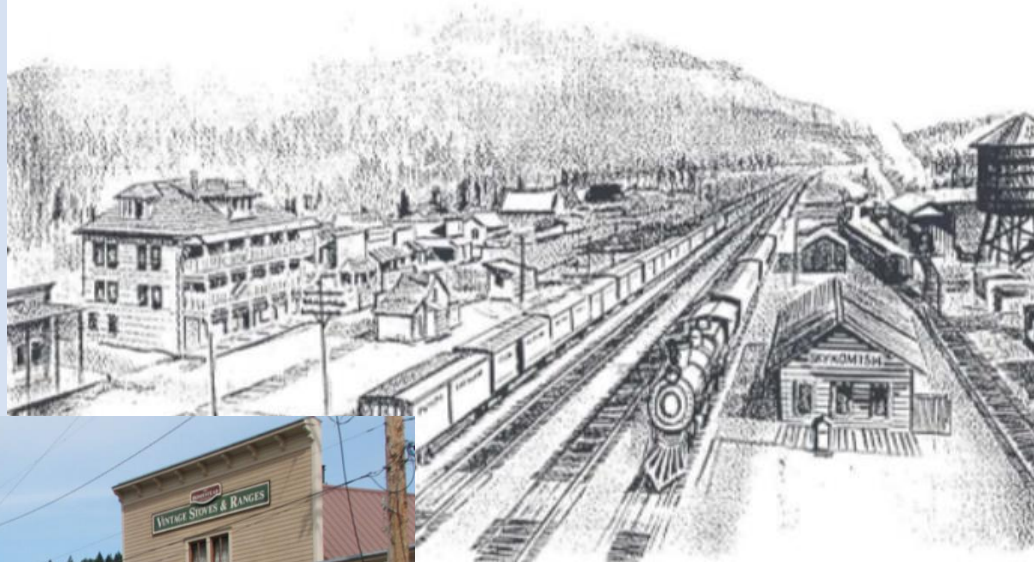
# Environmental Good – Lower Duwamish Waterway

Photo credit: EPA  
Superfund Home





# Environmental Good - Skykomish



# Environmental Good - Skykomish



# Environmental Good - Skykomish





# Economic Good -Wenatchee Waterfront





# Economic Good - Rosalia



# Economic Good - Rosalia



# Economic Good - Bellingham Waterfront





# Economic Good - Bellingham Waterfront





# Greater Good – Habitat Restoration Port Gamble



# Greater Good – Affordable Housing Mt Baker Maddux



Photo credit: Google Maps



# Cleanup Rule Update



Phase 1: Initial Investigation, Site Hazard Assessment, Ranking and Public Notice Processes

Phase 2: Cleanup Standards



# Challenges



The future can be predicted; its timing cannot.



# MTCA: Brownfields, Affordable Housing, and Environmental Justice—Delivering Social Goods



**Mike Dunning**

Partner  
*Perkins Coie*



**Jim Neely**

Environmental Programs  
Managing Supervisor  
*King County*



**Rob Olsen**

Environmental Health Specialist  
*Tacoma-Pierce County Health  
Department*



Moderator: **Tracy Williams**

Associate  
*Beveridge & Diamond*



COUNSEL TO GREAT COMPANIES

Michael Dunning

Perkins Coie LLP

MTCA 30 Conference

## Mt. Baker Housing Association's Maddux Project

December 10, 2019

# MBHA's Maddux Project

CONCEPTUAL SITE PLAN



# MBHA's Maddux Project

## Before



## After





# MBHA's Maddux Project

## Media Coverage of the Project

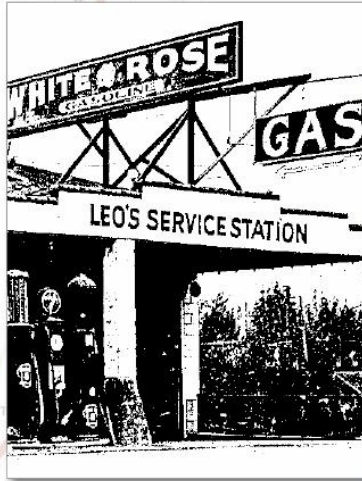
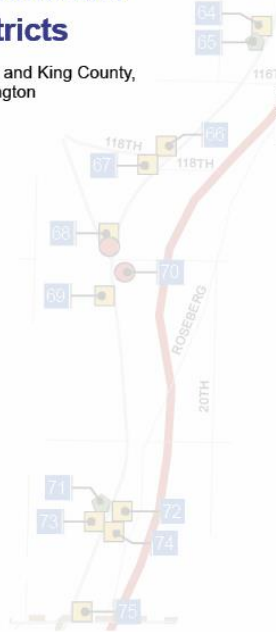
- [http://mtbakerhousing.org/news\\_events/on-the-block-heres-how-to-build-affordable-housing-on-a-brownfield-site-in-rainier-valley/](http://mtbakerhousing.org/news_events/on-the-block-heres-how-to-build-affordable-housing-on-a-brownfield-site-in-rainier-valley/)
- King 5 News: <http://www.king5.com/news/local/seattle/toxic-seattle-street-corner-set-for-redevelopment/406939308>
- <https://news.theregistryps.com/mt-baker-housing-receives-seattle-housing-levy-award-for-the-maddux-affordable-housing-project/>

White Center Community  
Development Association

Report on  
Historical Land Use Study  
of

## White Center, Beverly Park, and Boulevard Park Commercial Districts

Seattle and King County,  
Washington



Prepared by ECOSS  
for the King County Brownfields Program  
King County Solid Waste Division  
Department of Natural Resources and Parks  
July 2009

Boulevard Cleaners occupied the building space in the foreground until 2005. It is listed at this address in the 1977 Polk Directory and it may have been an original tenant in the building which was built in 1956.

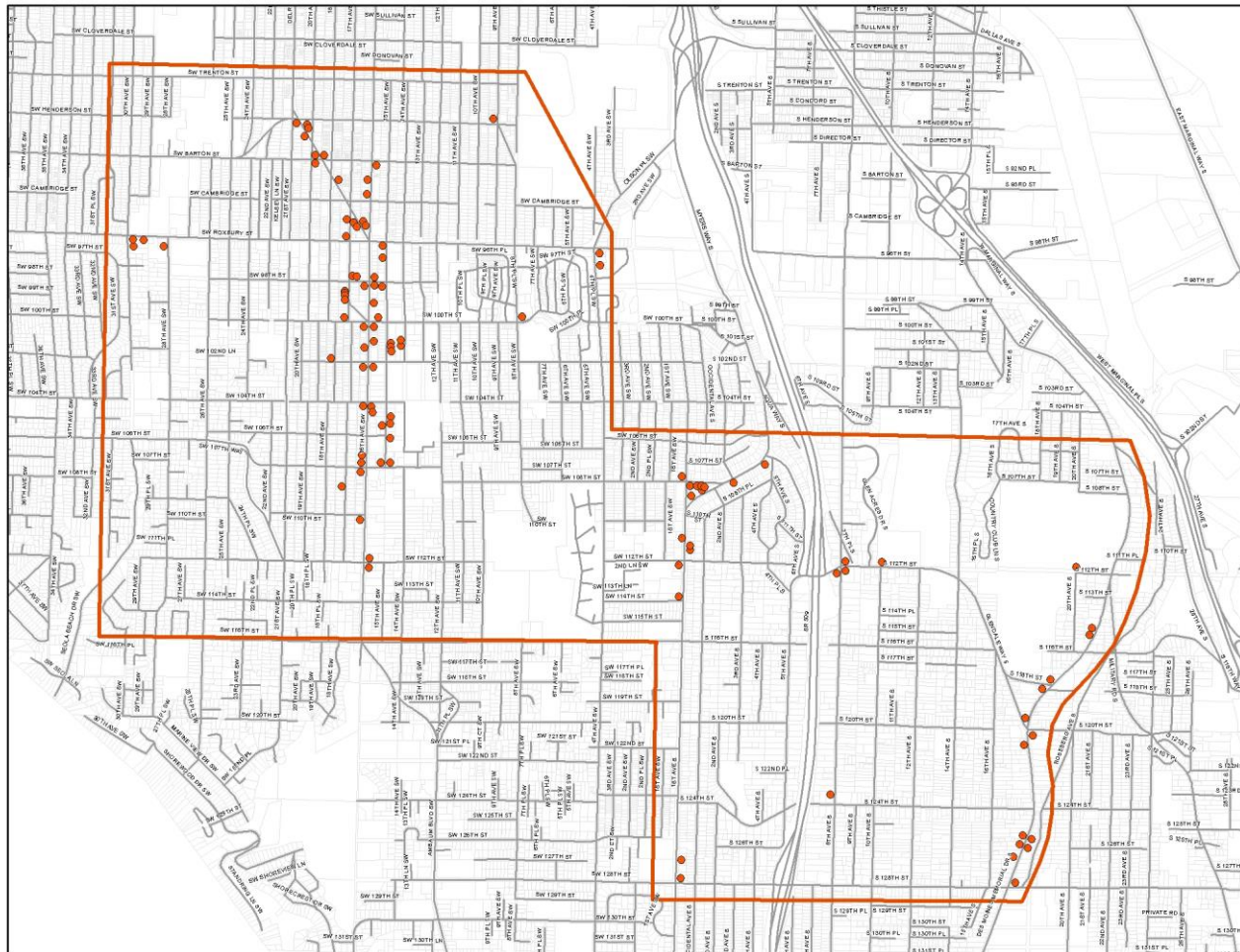


The space is currently occupied by Liberty Tax Services.

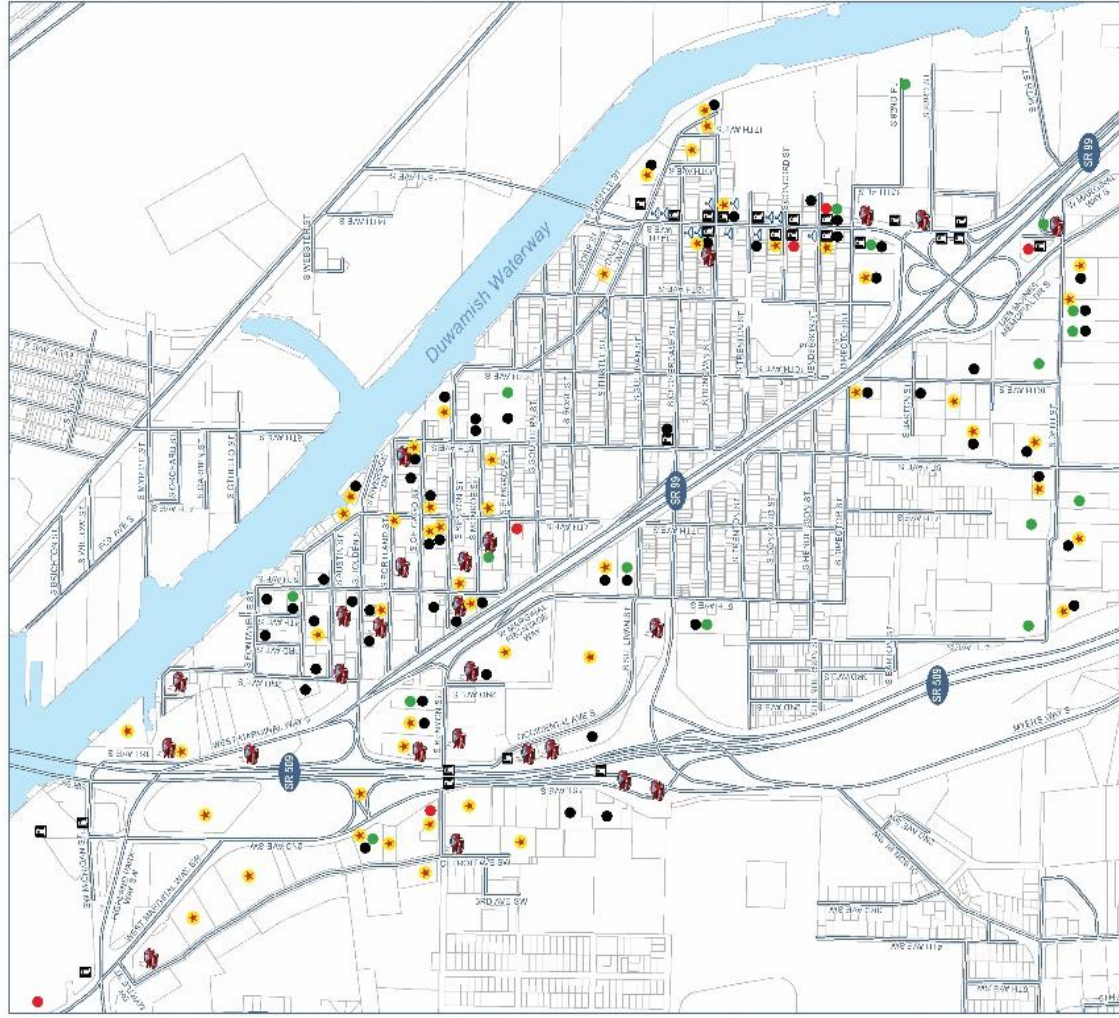


# White Center Brownfield Inventory

Updated 5-17-12







# MTCA: Triumphs and Tribulations



**Stan Alpert**

Senior Environmental Counsel  
*The Boeing Company*



**Darcy Nonemacher**

Government Affairs Director  
*Washington Environmental Council*



**Suzy Stumpf**

Senior Design Engineer  
*Farallon Consulting*



**Calvin Taylor**

Project Manager  
*City of Tacoma*



Moderator: **Gus Winkes**

Associate  
*Beveridge & Diamond*



# MTCA: Thirty Years and Counting



**Chris Gregoire**

CEO, *Challenge Seattle*  
22<sup>nd</sup> Governor of Washington



**Rod Brown**

Partner  
*Cascadia Law Group*



**Pete Kmet**

42<sup>nd</sup> Mayor of Tumwater,  
Washington



Moderator: **Loren Dunn**

Principal  
*Beveridge & Diamond*





# Closing Remarks

**Allyn Stern**, Of Counsel, Beveridge & Diamond

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