

# Lower Duwamish Waterway Roundtable Proposed Approach and Draft Operating Procedures

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Draft v. 4-15-22

## 1. Background

### **A. Lower Duwamish Waterway Superfund Cleanup Site**

The Lower Duwamish Waterway (LDW) Superfund site is a five-mile segment of Seattle’s only river, the Duwamish. The river flows between Georgetown and South Park and through the industrial core of Seattle into Elliott Bay. The US Environmental Protection Agency (EPA) declared the Lower Duwamish Waterway a “Superfund” site in 2001, meaning it was eligible for a special federal cleanup program due to the severity of its contamination. In 2014, EPA completed the final cleanup plan for the site, known as the “Record of Decision.”

### **B. Origins of the LDW Roundtable**

Section 13.2.8 of the Record of Decision (ROD) states: “Environmental Justice concerns will be addressed before, during and after implementation of the remedy through means that include...Continuing to engage the community throughout remedial design and implementation of the cleanup, including convening an advisory group as a means for the affected community and local agencies to work together on addressing the impacts of the cleanup on the affected community” (emphasis added).

In 2015-2016, during the interviews leading up to the update of the Community Involvement Plan for the LDW cleanup, the EPA asked interviewees about the purpose and structure of the “advisory group” mandated by the ROD. In general, the EPA heard two main responses: (1) DRCC/TAG should continue functioning as a Community Advisory Group (CAG) for this cleanup site; and (2) there needs to be an additional group with broader membership than DRCC/CAG to provide recommendations to the EPA.

As a result of the interviewees’ suggestions, the EPA will continue working with DRCC/TAG as a CAG, but the EPA will also convene a Lower Duwamish Waterway Roundtable (Roundtable) that will have a broader membership than DRCC/TAG. Notably, the Roundtable will include, among others, PRPs such as King County, the City of Seattle, the Port of Seattle, The Boeing Company, and other businesses<sup>1</sup> listed as PRPs. This broader membership will enable a range of interests to come together to make recommendations to the EPA during the design and implementation of the cleanup.

From February through August 2017, a small group of potential members of the LDW Roundtable met as an “Organizing Committee” to draft these operating procedures for the Roundtable to review and approve at their first meeting. See Appendix A for the list of Organizing Committee members. From 2017-2018, a neutral third-party facilitator (Triangle Associates) interviewed a broad cross-section of prospective members of the Roundtable and solicited their feedback on the draft operating procedures

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<sup>1</sup> Or representatives of these PRPs

(see Appendix B for a list of interviewees). During their first meeting, Roundtable Members reviewed an updated version of the draft operating procedures that includes feedback from Triangle's interviews.

## 2. Purposes and Principles of the Roundtable

### **A. Purposes**

The Roundtable's purposes are to:

- Seek creative solutions to mitigate LDW cleanup construction impacts (e.g. traffic, noise, light, impacts on Tribal activities, air quality, water quality, waterfront business operations, fishing, recreation, and quality of life);
- Provide recommendations to the EPA, as well as other agencies and organizations, to develop a successful cleanup design and implementation;
- Act as an inclusive, neutral, and transparent forum for input from all stakeholders - Tribes, residents, businesses, industries, labor groups, neighborhood groups, government agencies, waterway users, fishers, and others;
- Act as a means of providing good-faith communications, understanding, and information on topics related to the Superfund cleanup;
- Identify opportunities for potential ways to benefit the neighborhoods and communities affected by the cleanup, within the parameters of the Superfund site cleanup; and
- Strive to allow all stakeholders and agencies to operate under the same set of facts.

### **B. Limitations**

Per the Community Involvement Plan, the Roundtable will have certain limitations. For example, the Roundtable is not intended to take the place of:

- DRCC/TAG's function as a CAG;
- Government-to government Tribal consultation with the Suquamish, Muckleshoot, or Yakama Tribes;
- Formal public involvement and public comment opportunities that the EPA and Ecology would otherwise do;
- The Healthy Seafood Consumption Consortium; or
- The Tribes, Trustees, and Community Group.

EPA decisions related to the Tribes, Trustees, and Community Group and Healthy Seafood Consumption Consortium will consider input from the Roundtable. At a minimum, EPA will continue to follow legal requirements and policies. Decisions will consider best use of EPA resources.

### **C. Principles**

The Roundtable will operate in accordance with the following principles: balance of power, transparency, effectiveness, solutions-oriented, and fairness and equity for the entire community.

### **D. Termination**

The Roundtable is intended to provide feedback to EPA throughout the remaining cleanup of the LDW Superfund site. However, if the Roundtable is not meeting EPA needs, or if budget, legal, or other issues arise, EPA may in its discretion discontinue its role as the convener of the Roundtable. In this event, EPA

will give notice as soon as possible to Roundtable and Caucus Members. Please note that the Roundtable may continue meeting on its own without having EPA be the official convener.

### 3. Roundtable Membership

The Roundtable will include a seat for EPA as the convener plus approximately 5-10 seats for Roundtable Members. Roundtable Members will consist of:

- Caucus Leads who represent caucuses made up of members with common interests.
- Each affected federally recognized Tribe that chooses to participate.
- Resource members whose primary role is providing information (rather than recommendations) to the Roundtable.
- One ad-hoc or open seat.

Please see the graphic on page 6 for an illustration of the Roundtable Membership.

#### A. EPA as the convener of the Roundtable

The EPA will attend all regularly scheduled meetings. It will participate in and conduct educational briefings on the past and present of the site to ensure a shared knowledge of key issues, technologies, and the Superfund process. EPA will provide Roundtable Members with topics and proposals for their consideration in advance of Roundtable meetings. EPA will assist the Steering Committee (see Section 7.B) in formulating Roundtable agendas and work plans. EPA will respond to action items in a clear, direct, and timely fashion. EPA will seriously and in good faith consider the recommendations of the Roundtable and provide verbal responses to that input (see Section 6.B) so that the Roundtable is able to see how its input being considered. EPA will strive throughout the process to engage in respectful, constructive dialogue with Roundtable Members, and be receptive to Roundtable recommendations.

#### B. Caucuses

Caucuses are sub-groups consisting of identified representatives with similar interests. The purpose of caucuses is to allow interest groups to discuss issues and recommendations prior to larger Roundtable meetings.

- **Caucuses may include:**
  - **Community Advisory Group (CAG) Caucus** (i.e. the Duwamish River Cleanup Coalition/Technical Advisory Group (DRCC/TAG) and its members)
  - **Non-CAG Community Caucus** (i.e. community members, neighborhood associations, and community-based organizations that are not part of DRCC/TAG)
  - **PRP Governmental Interests Caucus** (i.e. local government agencies listed as PRPs, including Seattle Public Utilities, King County Wastewater Treatment Division, and the Port of Seattle)
  - **Non-PRP Governmental Interests Caucus** (i.e. local government agencies that are not listed as PRPs, including health and environmental agencies)
  - **PRP Business/Industry/Labor Interests** (i.e. business, industry, and labor groups that may be listed as PRPs)

- **Non-PRP Business/Industry/Labor Interests** (i.e. small businesses that are not listed as PRPs that are affected by the cleanup, such as markets, restaurants and stores)
  - **Recreational River Users** (i.e. yacht clubs, liveaboard residents, paddle clubs, rowing clubs)
  - **Fishers** (people who fish on the Duwamish River). Note: the Roundtable is distinct from EPA's Institutional Control Program and its associated Community Steering Committee.
  - **Caucus Membership:** Each caucus will establish criteria for membership. The criteria for membership in each caucus will be documented once developed. This may also include timeframes for when applications for membership in a caucus will be accepted. Each Caucus Lead shall work with the caucus to determine what constitutes a quorum and how the caucus will govern itself in reaching recommendations.
  - **Leads:** Each caucus will have a lead (or leads) who serve as the primary point of contact for EPA and the facilitator. Caucus Leads will be responsible for participating in the Roundtable Steering Committee (see Section 6.B.) and maintaining communication with their caucus members. Each caucus will determine how leads will be selected and terms for the leads. Caucuses can contact the Roundtable's neutral third-party facilitator for guidance on how to fairly create protocols for selecting leads, among other topics.
  - **Facilitation:** Caucuses may need facilitation support as the members decide on leadership, how they should organize themselves, and communication protocols. Caucuses can individually decide to obtain outside facilitation if needed.
  - **Communication:** Each caucus will internally communicate in advance of Roundtable meetings to develop its own recommendations. It is advised that each caucus meet in person or by phone prior to the larger Roundtable meetings. Each caucus is encouraged to bring a single view to Roundtable meetings. If a caucus cannot come to agreement on a recommendation, multiple viewpoints may be brought forward. Caucuses may speak with each other prior to Roundtable meetings, but this is not required.
- C. **Tribes:** Federally recognized Tribes potentially affected by the clean-up (participation is optional). EPA has invited the Suquamish Tribe, Muckleshoot Tribe, and Yakama Nation to participate in the Roundtable. These Tribes' participation in the Roundtable would not affect their government-to-government consultation rights with EPA.
- D. **Resource Members:** Resource Members provide information to Roundtable Members and EPA, but they do not develop recommendations for EPA to consider. Resource members may be standing members or requested for specific topics. Standing Resource Members will be identified after the Roundtable convenes. EPA can invite Resource Members to attend meetings, or Roundtable Members can request that EPA invite Resource Members to participate. There are a number of potential Resource Members, as outlined below.
- **Elliott Bay Trustee Council** members not part of other caucuses or represented by other seats.<sup>2</sup>

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<sup>2</sup> The Elliott Bay Trustee Council is comprised of Federal, state and tribal natural resource trustees. Members of the Trustee Council include the U.S. Department of the Interior; the U.S. Department of Commerce, acting through NOAA; the State of Washington; the Suquamish Tribe; and the Muckleshoot Indian Tribe).

- Other federal agencies, such as the US Army Corps of Engineers or US Geological Survey.
  - Other state agencies, such as the Washington State Department of Ecology, Washington State Department of Health, Washington State Department of Natural Resources, and Washington Department of Fish and Wildlife.
  - Local government agencies that are not part of either the PRP or non-PRP local government caucus.
  - Educational institutions, such as the University of Washington's Superfund Research Program.
- E. **Ad Hoc:** This could include an interested member of the public or other entity as agreed to by the Roundtable. Roundtable members will have an opportunity to discuss the addition of an ad-hoc member prior to this ad-hoc member officially joining the Roundtable.

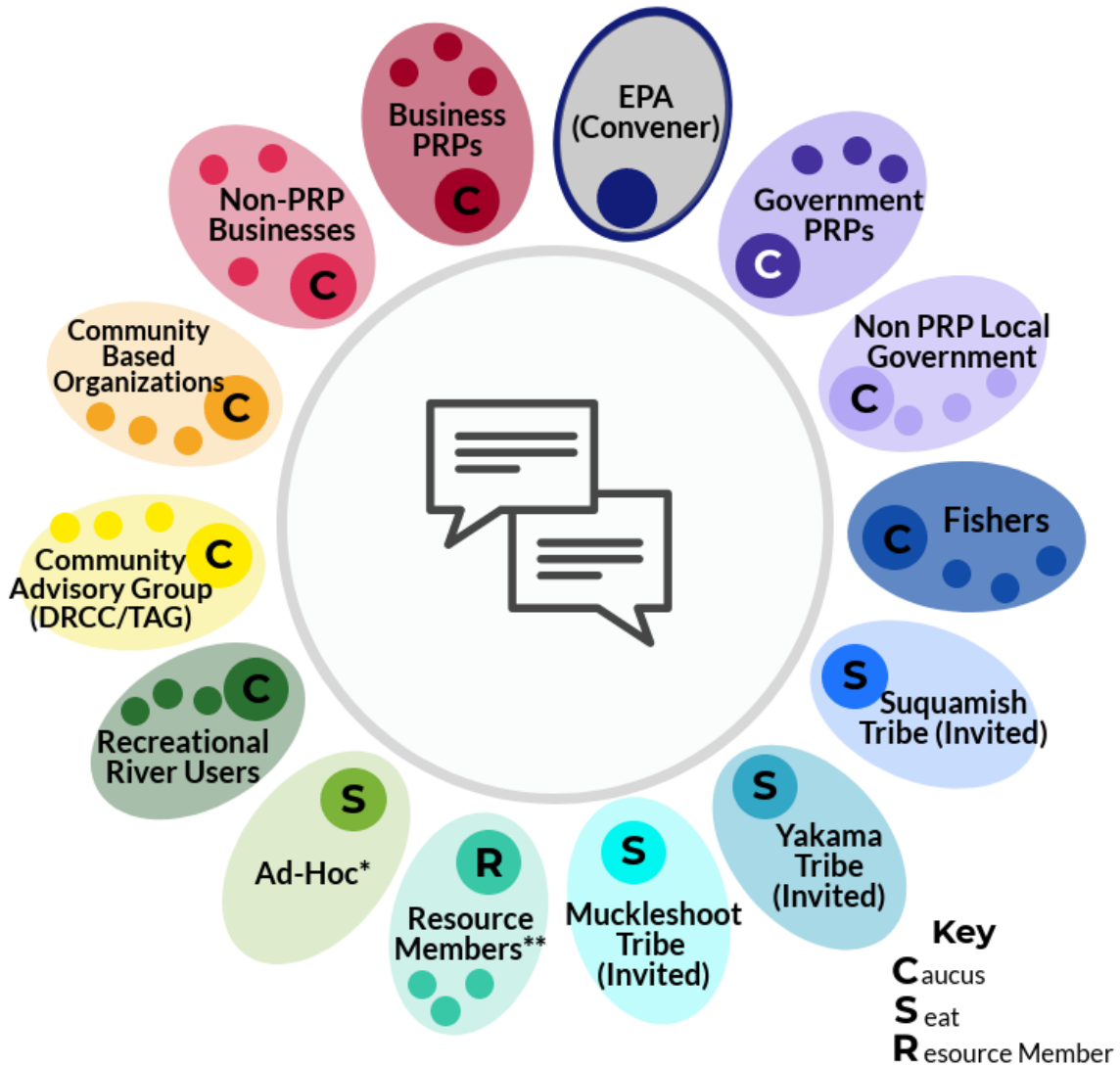
#### 4. Other Roundtable Considerations

- A. **Compensation:** EPA's legal advisors have confirmed that EPA is not permitted to provide financial stipends to community members for their participation. Other entities (e.g. government agencies, foundations, nonprofit organizations, businesses, etc.) may independently provide community participation stipends, but EPA cannot direct or encourage entities to do this or be involved in decisions about compensation. Other entities involved in the Roundtable will work to find funding to compensate community members who require financial support for their participation. If funding is not available to support stipends for community members, all Roundtable members will be alerted to this in advance of Roundtable meetings. If Roundtable members choose to not participate in the Roundtable as a result of unavailable community stipends, *EPA will work with Roundtable members to identify potential solutions*, or, if none are acceptable, to recommend whether to dissolve the Roundtable. EPA will make a decision, considering all options for public involvement, and will move forward with remedial design and action.
- B. **Attendance:** Roundtable Members and members of the public are encouraged to attend Roundtable meetings consistently so that EPA hears their perspective and so that they stay abreast of cleanup updates.
- C. **Conflict of Interest:** To ensure the integrity of the Lower Duwamish Waterway Roundtable, it is important that members disclose conflicts of interests. This means that all Roundtable Members and Caucus Members are expected to disclose any interests (including financial interests) that might benefit from a particular Roundtable recommendation to EPA. This includes a direct benefit to the Roundtable member, or an indirect benefit through a family, business or other affiliation. A Roundtable member with a conflict of interest must disclose in writing to EPA and other Roundtable Members the nature of the potential conflict of interest. The Roundtable will assess options to address the conflict of interest through temporary or permanent modifications to the Roundtable and/or Caucus Member's participation.



# Lower Duwamish Waterway Roundtable

**Purpose:** To provide a forum for interested and affected parties to make recommendations for the EPA to consider throughout the Lower Duwamish Waterway Superfund cleanup.



\* Non-governmental community members or interest groups not represented in the Community caucus.

\*\* Government entities that contribute information but do not develop recommendations, including but not limited to the WA Dep't of Ecology and others

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## 5. Work Plan and Topics

The Roundtable will address topics within the scope of the EPA Superfund cleanup of the LDW. The Roundtable will develop an annual work plan to guide its work to accomplish the purposes outlined in 2A. EPA enforcement information will not be included. The ROD for the LDW is final and remedy selection is not the focus of the Roundtable. Instead the Roundtable will focus on issues related to the design and implementation of the remedy.

EPA acknowledges that there are a variety of issues that impact Duwamish Valley residents that fall outside the scope of the Superfund cleanup. For example, EPA understands that gentrification and displacement, a lack of grocery stores, food insecurity, insufficient green space, and rising housing costs are all major concerns in the Duwamish Valley. However, EPA does not have authority over local housing, food policy, and public space decisions, which means these topics will not be directly addressed in Roundtable meetings. To support others in addressing issues important to Roundtable members, EPA will reserve meeting venues for 30-60 minutes beyond the Roundtable meeting to allow local government agencies, organizations, businesses and others to continue focusing on these topics.

## 6. Making Recommendations to EPA

### **A. Making Recommendations**

The Roundtable will be an advisory, not a decision-making, body. All members of the Roundtable will be involved with making recommendations to EPA. Recommendations are meant to provide input and feedback to the EPA on issues related to the LDW Superfund cleanup.

Prior to Roundtable meetings, Caucus Leads will receive a written overview of the issues that EPA is seeking recommendations or feedback on. Each caucus will develop its own recommendations for EPA to consider. The Roundtable will meet to try to reconcile recommendations into a unified recommendation if desired. If there is disagreement, each caucus can submit its own recommendations. Meeting summaries will document dissenting recommendations at the request of individual Roundtable Members.

### **B. EPA's Responses to Recommendations**

At Roundtable meetings, EPA will provide verbal responses to the recommendations that were provided at the past Roundtable meeting. These responses will be captured in the meeting summaries, which will be posted publicly on the Roundtable website.

## 7. Roles

### **A. Role of the US Environmental Protection Agency**

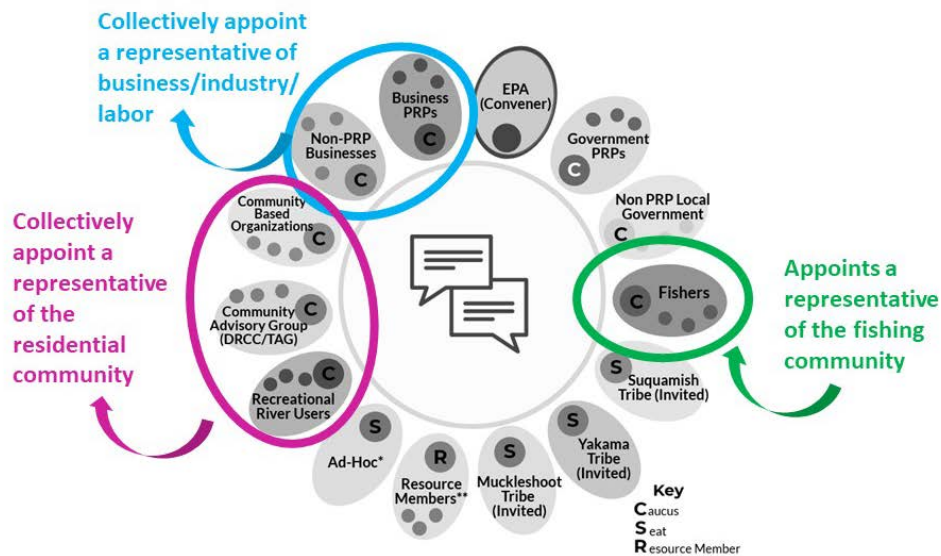
The EPA will attend and participate in Roundtable meetings as the convener, to serve as a resource and to receive recommendations from the Roundtable. See Sections 3A and 6B for more information about EPA's role.

## **B. Role of the Steering Committee**

Below is information on the purpose of the Steering Committee and how it is established.

- **Purpose:** The Steering Committee will coordinate with EPA to guide the work of the Roundtable, including soliciting agenda topics, drafting meeting agendas, developing Roundtable work plans, and other duties as assigned. The Steering Committee will meet either by phone or in person up to twice prior to each Roundtable meeting. Steering Committee members (both members and alternates) will receive an agenda a week in advance of their meetings. Note: any Roundtable Member can directly request an agenda topic to EPA, the Steering Committee, or any Steering Committee member at least six weeks prior to a Roundtable meeting.
- **Steering Committee Composition:** EPA will establish a Steering Committee with members from three interest groups that have been actively involved in the Roundtable to date and which are likely to be impacted by the cleanup: residents, business/industry/labor, and fishers. As Section 3B describes, the Community Advisory Group (CAG) Caucus, the non-CAG Community Caucus, and Recreational River Users represent residential interests in the Duwamish Valley; the Potentially Responsible Party (PRP) Business/Industry/Labor Caucus and Non-PRP Business/Industry/Labor Caucus collectively represent the interests of business/industry/labor; and the Fishers Caucus represents the interests of the fishing and fish consuming community associated with the Duwamish River.
- **Nominations:** Steering Committee members may be self-nominated and/or nominated by their caucuses during Roundtable meetings or during separate caucus meetings. EPA will be notified of these nominations.
- **Appointments:** As the diagram on the next page shows, the CAG, non-CAG and Recreational River Users Caucuses will review the nominations and jointly select one Steering Committee member and one alternate to represent residential interests; the PRP and non-PRP Business/Industry/Labor Caucuses will review nominations and jointly select one Steering Committee member to represent their interests and one alternate; and the Fishers Caucus will appoint one Steering Committee member and one alternate to represent the interests of the fishing and fish consuming community. EPA and Steering Committee communications (emails, draft agendas, etc) will include both the primary and alternate Steering Committee member. There are no term limits for serving on the Steering Committee.
- **Modifications:** Every year in January, EPA and the Roundtable will review Steering Committee membership to assess whether it is appropriately inclusive and sufficiently balances community and responsible parties. EPA reserves the right to change the composition of the committee as needed at any point in the year.





### C. Role of the Public

Non-Roundtable Members (i.e. members of the public) will be able to observe Roundtable meetings and will have time on the agenda to ask questions or to comment at the end of each meeting.

Like Roundtable Members, non-members who attend Roundtable meetings are expected to maintain a civil and respectful meeting environment (see Section 8E for ground rules that apply to members and non-members). The Roundtable expects that no personal attacks, clapping, booing or any other form of support or nonsupport be used throughout Roundtable meetings. Non-Roundtable Members who wish to provide informal comments will adhere to the following ground rules:

- A maximum of 3 minutes will be provided to each non-Roundtable member who is interested in providing informal comments.
- Each commenter will state name and affiliation.
- EPA and Roundtable Members are not required to respond to these comments.
- Opportunities for non-Roundtable Members to provide comments at the end of Roundtable meetings do not constitute formal comments, such as those provided in a public hearing. However, a summary of comments from non-Roundtable Members will be captured in the meeting notes.

EPA's role in funding or seeking support for food and childcare is limited by Federal law. Within these limitations, EPA will support efforts by those involved on the Roundtable to secure food, childcare, and a convenient meeting location to support the involvement of the community.

#### **D. Role of Facilitator**

The facilitator, under EPA contract, will act as a neutral conduit of information and will seek to ensure equitable participation by all members. The facilitator will also enhance the flow of information to and from the EPA and between Roundtable Members. This includes overseeing the translation of materials and providing interpretation services at meetings. Lastly, the facilitator will develop meeting summaries and offer organizational support. The current facilitation contract is with Triangle Associates.

Other entities, such as the UW Superfund Research Program or UW Graduate School fellows may also provide facilitation support to individual caucuses.

### **8. Materials**

#### **A. Agendas**

The Steering Committee will work with EPA and the facilitator to develop meeting topics. EPA will make the final decisions on agenda topics. Agendas will be based on a template with regularly appearing sections such as EPA updates, Member updates (caucus members, resource members, Tribes, and ad hoc member); questions and answers; a topic/issue for which recommendations are sought; and comments/questions from the general public. A list of proposed agenda topics will be distributed to Roundtable members a month prior to Roundtable meetings; final agendas and materials will be distributed at least a week in advance of Roundtable meetings.

#### **B. Meeting Notifications**

Roundtable meetings will be noticed through the Roundtable listserv and Roundtable website. Other notification pathways will be used as available.

#### **C. Summaries**

Meeting summaries will be developed after each Roundtable meeting. In general, these summaries will not attribute comments to specific individuals. However, Roundtable Members can choose to go “on the record” and have their comments captured in meeting summaries if requested at the time. Roundtable meeting summaries will include Roundtable recommendations and EPA responses to previous Roundtable recommendations, if discussed at the meeting.

#### **D. Work Plans**

EPA will work with the Roundtable Steering Committee to develop annual work plans. These work plans are intended to serve as a guide for the Roundtable and support agenda planning, with the understanding that circumstances may necessitate changes to the Roundtable work plan.

#### **E. Ground Rules**

Below are ground rules for effective communication to be used during each Roundtable meeting. These will be posted at Roundtable meetings.

Be Respectful

- One person speaks at a time.
- Listen when others are speaking, avoid interrupting and side conversations.

- Allow time for interpreters when present.
- Hear and respect minority opinions.
- Good allies speak up. Members are encouraged not to ignore inappropriate behavior

#### Be Constructive

- Acknowledge that all participants bring with them legitimate purposes, goals, concerns and interests, whether or not you are in agreement with them.
- Act in “good faith,” seeking to resolve conflicts and identify solutions.
- It is OK to disagree; it is not OK to make personal attacks or slanderous statements.
- Minimize the use of jargon and acronyms, define and explain when used.
- If you have a problem with a particular person, take the matter up with that person directly. If unable to resolve the difference, seek assistance from the facilitator.

#### Be Productive

- Begin and end meetings on time.
- Respect time constraints.
- Adhere to the agenda as much as possible, focusing on the subject at hand.

#### Ground Rules for Caucus Breakouts

- The intent is for caucuses to have a chance to discuss shared issues, concerns, and questions about the Superfund cleanup. While there is no guarantee of confidentiality during Roundtable meetings, caucus breakouts should be a safe space for dialogue.
- Caucuses may invite or request a member of another caucus to join their discussion.
- It is best to stay in your own caucus unless invited to visit another. If you visit a caucus that is not your own, identify yourself, respect the intent of each caucus to focus on its particular interests, stay in listening mode, and leave if requested.
- Choose a notetaker.
- Choose a facilitator (could be the Caucus Lead), or ask Triangle to serve as a facilitator. If possible, coordinate this before the meeting.

The Roundtable will review its ground rules after one year of operation and make adjustments as necessary.

## 9. Meeting Schedule

The Roundtable will meet three times per year, or as otherwise agreed to by the Roundtable. Once a year there will be an “all hands on deck” meeting that seeks to maximize attendance by all Roundtable Members and Caucus Members. Each caucus will aim to meet at least once between Roundtable meetings.

## 10. Amending the Operating Procedures

The Roundtable Operating Procedures will be in effect as long as the Roundtable is in existence. It will be reviewed on a biennial basis. The Operating Procedures can be modified at any point in the year through the consensus of Roundtable Members and approval of EPA.

## 11. Appendices

- A. Organizing Committee Members
- B. Stakeholder interviewees
- C. Media policy

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## Appendix A – Organizing Committee Members

Name	Affiliation (alphabetical)
Willard Brown	Delridge Neighborhoods Development Association
James Rasmussen	Duwamish River Cleanup Coalition/Technical Advisory Group (DRCC/TAG)
Dave Gering	Manufacturing Industrial Council
Kevin Burrell	Seattle Public Utilities
Elly Hale	US EPA
Julie Congdon	US EPA

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## **Appendix B – Stakeholders Interviewed by Triangle Associates from 2017-2018 to Solicit Feedback on the Draft Roundtable Operating Procedures**

*Below is a list of stakeholders that the neutral 3<sup>rd</sup> party firm Triangle Associates to solicit their feedback on the draft Roundtable operating procedures (dated February 13, 2018) that was initially developed by the Roundtable Organizing Committee.*

- Anchor QEA, LLC
- LaFargeHolcim
- City of Seattle Duwamish Valley Program
- Duwamish River Cleanup Coalition/Technical Advisory Committee (DRCC/TAG)
- Duwamish Yacht Club
- Environmental Coalition of South Seattle (ECOSS)
- King County Department of Natural Resources and Parks
- Island Tug and Barge
- Highland Park Action Committee
- Johannessen & Associates attorneys
- Nucor
- Public Health Seattle-King County
- Representative from the Lower Duwamish Waterway Group (LDWG)
- Seattle Manufacturing Industrial Council (MIC)
- Soha and Lang attorneys
- Sustainability Ambassadors
- Washington State Department of Natural Resources
- Western Tugboat Co.

## **Appendix C - Media Policy**

*Media organizations might have an interest in the activities of the LDW Roundtable. Media organizations include but are not limited to broadcast, electronic, and print. The draft policy below describes how the LDW Roundtable will interact with the media.*

### **1. Media Information Requests**

EPA's LDW Remedial Project Manager will be responsible for responding to media requests regarding the Lower Duwamish Waterway. The Remedial Project Manager will adhere to EPA's internal media processes. LDW Roundtable Members and/or the facilitator will alert the LDW Remedial Project Manager if they receive a request from the media.

### **2. Interacting with the Media**

If a reporter directly approaches a member of the LDW Roundtable, this member would speak on behalf of his or her own agency/organization but not on behalf of the Roundtable as a whole. As needed, EPA can develop press releases related to the Roundtable.

### **3. Photography and Film**

EPA will be responsible for responding to requests to take photographs or film Roundtable meetings. EPA, in responding to the requests, will seek to obtain the consent of Roundtable Members and then either approve or decline the request.

### **4. Public Records Requests**

The Freedom of Information Act (FOIA) is a federal law that gives the public the right to make requests for federal agency records. All federal agencies, including EPA, are required to make requested records available unless the records are protected from disclosure by certain FOIA exemptions, such as Confidential Business Information, Privacy Act protected information, and others.