



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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July 8, 2010

Mr. David Hanna
City of Olympia Parks, Arts, and Recreation Department
222 Columbia St NW
Olympia WA 98501

RE: ORDER #7854 First phase of reconstruction of Percival Landing

Dear Mr. Hanna:

On September 29, 2009 the City of Olympia submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A revision to the JARPA was submitted on March 9, 2010. A joint public notice regarding the request was distributed by the Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on February 22, 2010.

On behalf of the State of Washington, we certify that the work proposed in the JARPA and public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This certification is subject to the conditions contained in the enclosed Order and may be appealed by following the procedures described in the Order.

If you have any questions concerning the content of this letter, please contact Helen Pressley at (360) 407-6076.

Sincerely,

Brenden McFarland, Section Supervisor
Environmental Review and Transportation Section Manager
Shorelands and Environmental Assistance Program

By certified mail 7005 180 0000 7659 3380

cc: Darren Habel, Corps
Olympia Yacht Club, 201 Simmons St NW, Olympia WA 98501
Capitol Center LLC, 13930 A 92nd St SE, Snohomish WA 98290
Views on Fifth Avenue, 2621 2nd Ave #1005, Seattle WA 98121
Joseph Illing, 3241 Musser Dr SW, Olympia WA 98512
T & L LLC, PO Box 12329, Olympia WA 98509
Water St Building LLC, 222 W 4th Ave, Olympia WA 98501
T & L LLC, 6030 Troon Ln SE, Olympia WA 98501
Russell and Thyges Shaub, 1117 Broadway Plaza Suite 500, Tacoma WA 98402

Mr. David Hanna

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T & L LLC, 6030 Troon Ln SE, Olympia WA 98501
Russell and Thyes Shaub, 1117 Broadway Plaza Suite 500, Tacoma WA 98402
David and Sheri Shaub, 1117 Broadway Plaza Suite 500, Tacoma WA 98402
Donna Weist, 9040 Salty Dr NW, Olympia WA 98502
Hulbert Holdings LLC, 413 Bates St SE, Tumwater WA 98501
Evergreen Olympic Properties, 724 Columbia St NW Suite 200, Olympia WA 98501
MG Burgher & Assoc, PO Box 309, Carlton WA 98814
PIH Olympia LLC, 12265 El Camino Real Suite 300, San Diego CA 92130
Vine St Investors LLC, PO Box 430, Arlington WA 98223
Shaub-Ellison & Co, 1117 Broadway #500, Tacoma WA 98402
Port of Olympia, Attn: Clarita Mattox Property Manager, 915 Washington St NE,
Olympia WA 98501
City of Olympia, Attn: Fran Eide City Engineer, PO Box 1967, Olympia WA 98507
DNR South Puget Sound Region, Attn: Shannon Soto, 950 Farman Ave N,
Enumclaw WA 98022

ecc: Loree' Randall, Ecology
Helen Pressley, Ecology
Laura Inouye, Ecology
Alex Callender, SWRO Ecology
jenni_dykstra@fws.gov
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A) ORDER #7854
WATER QUALITY) Corps Reference No. NWS-2009-1194
CERTIFICATION TO) First phase of reconstruction of Percival Landing
City of Olympia Parks, Arts and) including dredging; removal and replacement of
Recreation Department) the existing boardwalk, viewing pier, platforms,
in accordance with 33 U.S.C. 1341) moorage floats and finger piers; shoreline
(FWPCA § 401), RCW 90.48.120, RCW) restoration and upland improvements in
90.48.260 and Chapter 173-201A WAC) Olympia, Thurston County, Washington

TO: Mr. David Hanna
City of Olympia Parks, Arts, and Recreation Department
222 Columbia St NW
Olympia WA 98501

On September 29, 2009 the City of Olympia submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A revision to the JARPA was submitted on March 9, 2010. A joint public notice regarding the request was distributed by the Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on February 22, 2010.

The City of Olympia proposes to reconstruct a portion of Percival Landing, an existing public access series of boardwalks and structures, for public viewing and boat moorage. The project will be conducted in phases. The first phase (of three phases) will include: Maintenance dredging, removal and replacement of existing boardwalk structure, removal and replacement of existing viewing pier and platforms, removal and replacement of existing moorage floats and finger piers, shoreline restoration, and upland improvements.

Maintenance Dredging: The proposed work consists of dredging approximately 19,100 cubic yards of sediment via a barge mounted clam shell dredge. Return water draining from the receiving barge will be treated by a filter media such as straw bales and geo-textile fabric before returning to the bay. The dredged material will be loaded in to trucks and will be disposed of at a Subtitle D landfill.

No Dredged Material Management Program (DMMP) suitability determination was required for the proposed dredged material to be disposed at the upland facility. However, a determination regarding the quality of the post-dredge sediment surface with respect to the DMMP antidegradation guidelines was required. The data indicates that the post-dredge surface in the vicinity of sampling stations C1 and C3 would likely be degraded relative to the existing surface sediment. In addition, the sediment in the vicinity of sampling station C2, while no longer slated for dredging, includes elevated levels of mercury and dioxin. The DMMP agencies requested a design that would address the sediment quality issues in the newly exposed surface sediment, and suggested that the elevated mercury and dioxin concentrations observed at C2 be addressed even though dredging was not proposed for the vicinity.

A dredge-and-cover design that would result in a one-foot layer of clean surface sediment in the areas to be dredged and a six-inch cover in the vicinity of station C2 was submitted and approved. There was a substantial increase in the amount of material being dredged when the amount in the Joint Public Notice (12,000 cubic yards) is compared to that in the DMMP antidegradation determination (19,100 cubic yards). This is because none of the overdredge sediment was included in the original analysis then included in the public notice. Approximately 1,300 cubic yards of clean sand will be used for the cap.

Removal and replacement of existing boardwalk structure: The work will include removal of approximately 33,500 square feet of existing timber boardwalk structure, of which 25,120 square feet is located over water, and the associated 224 creosote piles. This structure will be replaced with a concrete structure and recycled wood timbers. Up to 16,220 square feet of this structure will be located over water and will be supported by 95 concrete (24 - inch in diameter) piles. The new structure will integrate grating for light penetration. In areas where the new boardwalk will be located in upland portions of the site, a sheet pile wall and concrete retaining wall will be installed to support these areas.

Removal and replacement of existing viewing pier and platforms: This portion of the work includes removal of existing viewing pier and platform, with larger pier and viewing platform with increased view of Budd Inlet. In addition, two pedestrian bridges will be constructed. The first will span the new aquatic area inlet and will be an arched manufactured steel bridge. The second pedestrian bridge will be a "fly over" bridge and curve around one of the habitat planting areas.

Removal and replacement of existing moorage floats and finger piers: All existing moorage floats (9,900 sq ft), piles (34), and gangways (920 sq ft) will be removed and replaced. In addition, a new float will be installed for access. The total square footage of new floats will total 8,120 sq ft, of which 2,030 sq ft will be grated. The new moorage floats will be held in position with 27 (24-inch in diameter) concrete piles. A separate finger pier and floating stage is also proposed. This structure will also provide moorage and summertime performance area for concerts and presentations. This structure will have an area of 3,570 sq ft and use 13 (24-inch in diameter) concrete piles.

Shoreline Restoration: Shoreline restoration will involve removal of approximately 3,360 cubic yards of concrete rubble and angular rock riprap from the nearshore area. The above work, combined with re-grading of the shoreline slopes, will create approximately 5,590 sq ft of new aquatic habitat. Coir logs will be used to stabilize the shoreline toe of the new aquatic areas and habitat gravel (approximately 1400 cubic yards of 2-1/2- inch minus round gravel) will be placed along the entire length of the project shoreline.

All together, 258 creosote-treated piles will be removed in Section A of this project. A total of 166 24-inch concrete piling will be installed.

The purpose of this project is to maintain and improve a deteriorating waterfront facility for public access and recreation.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §1311, 1312, 1313, 1316, and 1317 (FWPCA § 301, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will meet the applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260, Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean the City of Olympia and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Headquarters Office, Attn: 401/CZM Federal permit coordinator, P.O. Box

47600 Olympia, WA 98504-7600 and/or hpre461@ecy.wa.gov. Any submittals shall reference Order #7854 and Corps Reference # NWS-2009-1194.

3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Permit Application (JARPA) received by Ecology on September 29, 2009 and as revised March 10, 2010. The Applicant will be out of compliance with this Order and must submit an updated JARPA if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual 404 and/or Section 10 permit for the project.
6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
7. The Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Furthermore, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified or if additional conditions are necessary to further protect water quality.
9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project.
10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
11. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

B. Water Quality Conditions:

1. This order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e)(i)(D).

C. Dredging and Disposal:

1. All dredging is to be done using a barge mounted clamshell dredge. Use of any other type of dredge will require prior approval from Ecology.
2. All dredged material will be transported to an approved Subtitle D landfill.
3. All debris (larger than 2 feet in any dimension) found floating in the dredging or disposal area shall also be removed.
4. Dredging and backfill operations shall be conducted in a manner that minimizes the disturbance or siltation of adjacent waters and prevents the accidental discharge of sediments, petroleum products, chemicals or other toxic or deleterious substances into waters of the State.
5. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
6. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.

D. Demolition and Construction:

1. During all in-water and overwater work, dock replacement, construction, and piling removal and installation, a containment boom and absorbent pads shall be placed around the perimeter of the work area to capture wood debris and other materials released into the waters as a result of these activities. Oil absorbent materials shall be employed if any floating oil sheen is observed. The boom shall remain in place until all oily material and floating debris have been collected and sheens dissipate. All accumulated debris shall be collected and disposed of upland at an approved disposal site.
2. The Applicant shall use tarps or other containment methods when cutting or drilling over water to prevent debris, sawdust, concrete and asphalt rubble, and other materials from entering the water.
3. Project activities shall be conducted to minimize siltation of the adjoining beach area and bed.

4. Intertidal work, including excavation, backfilling, and fill placement shall be completed in the dry whenever possible. Nearshore work will also require boom and silt curtain containment.
5. Short-term impacts to water quality shall be minimized during shoreline stabilization by careful placement of geotextile fabric, crushed rock, bedding and armor rock.
6. The work surface on the uplands shall include a containment basin for piles and any liquid or sediment removed during pulling of the piling. Basins may be constructed of durable plastic sheeting with sidewalls supported by hay bales or support structure to contain all sediment and liquid. Water left in the basins shall not be discharged into waters of the state.
7. Piles removed from substrate shall be moved immediately from the water onto the upland. The pile shall not be shaken, hosed-off, left hanging to drip or any other action intended to clean or remove adhering material from the pile. All excavated piles shall be disposed of at an approved upland disposal site.
8. In the event that pilings break off during extraction, the remaining piling may be removed by using a chain or a compressed air or hydraulically-operated saw. If the pilings cannot be removed completely, they shall be cut off at a minimum of two (2) feet below grade.
9. The Applicant shall employ a bubble curtain during installation of piles greater than 10 inches in diameter when using an impact hammer. The bubble curtain shall be deployed in a manner to ensure that bubbles completely engulf the piles during the impact driving. A block of wood at least six (6) inches thick shall be placed between the pile driver and the pile to minimize in-water noise.

E. Timing Requirements:

1. All in-water work shall be completed by the work window identified in the most current HPA issued for this project. Any project change that requires a new or revised HPA should also be sent to Ecology for review.
2. This Order shall remain in effect for a period of 5 years from date of issuance. Continuing this project beyond the 5 year term of this Order will require separate certifications every 5 years.

F. Notification Requirements:

1. The Applicant shall provide notice to Ecology's 401/CZM Federal permit coordinator at least 7 days prior to the start of dredging each dredging season and within 14 days after

completion of dredging each season. Notification should be made using all the information required in Condition A2.

G. Emergency/Contingency Measures:

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
 - a. Cease operations that are causing the compliance problem.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
 - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - e. Immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events Ecology's 401/CZM Federal permit coordinator at (360) 407-6076.
 - f. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands.
4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology using the above phone numbers.

H. Appeal Process:

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the “date of receipt” of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the “date of receipt” of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). “Date of receipt” is defined at RCW 43.21B.001 (2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Department of Ecology
Shorelands and Environmental Assistance Program
Attn: Helen Pressley
P.O. Box 47600
Olympia WA 98504-7600

For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>

*Order #7854, Corps No.NWS-2009-1194
First Phase of Reconstruction of Percival Landing
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Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

DATED July 8, 2010 at Olympia, Washington.



Brenden McFarland, Section Manager
Shorelands & Environmental Assistance Program
Headquarters Office – Ecology
State of Washington

ATTACHMENT A

**City of Olympia Parks, Arts, and Recreation Department
Percival Landing Rehabilitation Section A
Water Quality Certification Order #7854**

**Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #7854 Section 401 Water Quality Certification for the Percival Landing Rehabilitation Section A project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this order.

Signature

Date

Title