



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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February 29, 2012

Washington Department of Natural Resources  
Attn: Monica Shoemaker  
950 Farman Avenue North  
Enumclaw, WA 98022

Washington Department of Transportation  
Attn: Kerry Pihlstrom  
600 Stewart Street, Suite 520  
Seattle, WA 98101

RE: Water Quality Certification Order # 9038 for NWP 27, Corps Ref# NWS-2011-376 for South Lake Washington Shoreline Restoration project in King County, Washington.

Dear Ms. Shoemaker & Ms. Pihlstrom:

On June 13, 2011, the Washington Department of Natural Resources (WA DNR) and the Washington Department of Transportation (WSDOT), submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed South Lake Washington Shoreline Restoration Project.

The proposed project entails restoring approximately 1, 100 lineal feet of shoreline and 3 acres of upland in South Lake Washington through the following actions:

Shoreline and in-water area

- Removal of a derelict flume structure; 550 feet of the outer wall and cross beams will be removed and 371 linear feet of the inner wall will be removed.
- Remove rip rap and other debris from the shoreline
- Remove three derelict dolphins from the lake consisting of approximately 21 creosote-treated piles
- Place over 9,000 cubic yard of fine gravel, sand, round cobble and sediment along the shoreline to create shallow water habitat.
- Place three Engineered Log Jams along the shoreline
- Extend two stormwater outfalls into deeper waters



3 acre upland area

- Remove non-native invasive plants
- Plant native vegetation selecting species that will hang over the water
- Restore a 0.29 acre wetland located on the 3 acres
- Create 0.04 acres of wetland

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Penny Kelley at 360-407-7298. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Brenden McFarland, Section Manager  
Headquarters Office  
Shorelands and Environmental Assistance Program

by Certified Mail 7009 0820 0001 9056 0717

Enclosure

cc: Southport LLC

e-cc: Rebecca McAndrew, Corps of Engineers  
Stuart Reinbold, WDFW  
Joe Burcar, Ecology  
Tracie Walters, Ecology  
Rebekah Padgett, Ecology  
Karen Walter, Muckleshoot Tribe  
Scott White, WSDOT  
Loree' Randall, Ecology  
ecyrefedpermits@ecy.wa.gov

**IN THE MATTER OF GRANTING A ) ORDER # 9038**  
**WATER QUALITY ) Corps Reference No. NWS-2011-376**  
**CERTIFICATION TO ) Restore ~1,100 lineal feet of shoreline on Lake**  
 Washington Department of Natural ) Washington and 3 acres of adjacent upland in  
 Resources & Washington Department of ) King County, Washington.  
 Transportation )  
 in accordance with 33 U.S.C. 1341 )  
 (FWPCA § 401), RCW 90.48.120, RCW )  
 90.48.260 and Chapter 173-201A WAC )

TO: Washington Department of Natural Resources  
 Attn: Monica Shoemaker  
 950 Farman Avenue North  
 Enumclaw, WA 98022

Washington Department of Transportation  
 Attn: Kerry Pihlstrom  
 600 Stewart Street, Suite 520  
 Seattle, WA 98101

On June 13, 2011, Ecology received a Joint Aquatic Resources Permit Application (JARPA) from the Washington Department of Natural Resources (WADNR) and Washington Department of Transportation (WSDOT) requesting a 401 Water Quality Certification (WQC). Ecology issued a public notice for the project on July 7, 2011.

The proposed project entails restoring approximately 1, 100 lineal feet of shoreline and 3 acres of upland in South Lake Washington through the following actions:

Shoreline and in-water area

- Removal of a derelict flume structure; 550 feet of the outer wall and cross beams will be removed and 371 linear feet of the inner wall will be removed.
- Remove rip rap and other debris from the shoreline
- Remove three derelict dolphins from the lake consisting of approximately 21 creosote-treated piles
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3 acre upland area

- Remove non-native invasive plants
- Plant native vegetation selecting species that will hang over the water
- Restore a 0.29 acre wetland located on the 3 acres.
- Create 0.04 acres of wetland

The project is located along Lake Washington in King County, WRIA 8.  
Section 7      Township 23N      Range 5E

## **AUTHORITIES**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed 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 comply with 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 quality standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve WADNR 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 WADNR, WSDOT and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required as conditions shall be sent to Ecology's HQ, Attn: Federal Project Coordinator, P.O. Box 47600, Olympia, WA 98504-7600 or

via e-mail (preferred), if possible, to the Coordinator assigned to this project. Notifications shall be made via phone or e-mail (preferred). All submittals and notifications shall be identified with Order No. 9038 and include the Applicant's name, project name, project location, the project contact and the contact's phone number.

3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 13, 2011. The Applicant will be out of compliance with this Order and must reapply with an updated application 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. 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.
6. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
7. 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. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
8. The Applicant shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work 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 signatory that s/he has read and understands the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins.
9. 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.
10. Failure of any person or entity to comply with the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

## **B. Notification Requirements**

1. Notification shall be made via phone or e-mail (e-mail is preferred) to Ecology's Federal Project Coordinator. Notifications shall be identified with Order No9038 and include the Applicants name, project name, project location, project contact and the contact's phone number.
  - a. Immediately following a violation of state water quality standards, spill to waters of the state or when the project is out of compliance with any of this Order's conditions.
    - i. In addition to the phone or e-mail notification, the Applicant shall 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.
  - b. At least ten (10) days prior to all pre-construction meetings
  - c. At least ten (10) days prior to the onset of any work onsite
  - d. At least ten (10) days prior to conducting initial in-water work activities for each in-water work window established in the most current HPA.
  - e. At least seven (7) days within project completion.

## **C. Timing**

1. This Order is valid until the Applicant meets all its requirements and conditions.
2. In-water work is subject to a fishery closure window determined by Washington Department of Fish & Wildlife's Hydraulic Project Approval (HPA). All in-water work shall be completed by the work window indentified in the most current HPA issued for this project.

## **D. Water Quality Monitoring & Criteria**

1. Lake Washington is categorized as "core summer habitat" and the criteria of that class apply except as specifically modified by this Order.
2. This Order does not authorize the Applicant to exceed applicable state water quality standards for turbidity as described in WAC 173-201A-200(1)(e)(i)(D).
3. At least 20 days prior to commencing in-water work, the Applicant shall submit a Water Quality Monitoring and Project Plan (WQMPP) to the Federal Project Coordinator for review and approval. **In-water work shall not begin until Ecology approves the WQMPP.** At a minimum, the WQMPP shall include:
  - a. The names(s) and phone numbers(s) of the Pollution Control inspector and the person responsible for on-site monitoring and report;

- b. The BMPs and procedures to be used to protect water quality during specific proposed in-water activities;
  - c. A water quality sampling for turbidity, which include sample locations and frequency;
  - d. A background sample shall be collected at the beginning of each sampling event.
  - e. A map with numbered or named sampling locations associated with the in-water work activities;
4. Ecology must approve, in writing, any changes or additions to the WQMPP. Monitoring results shall be submitted monthly to the Ecology Federal Project Coordinator, per conditions A.2.
  5. The Applicant shall notify the Federal Project Coordinator, per condition A.2., immediately following a violation of state water quality.
  6. Mitigation and/or additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.

#### **E. Construction**

##### General Conditions:

1. The Applicant shall comply with the conditions of the current Construction Stormwater Permit (National Pollutant Discharge Elimination System – NPDES) issued for this project.
2. All clearing limits, stockpiles, staging areas, and trees to be preserved shall be clearly marked with HVF prior to commencing construction activities and maintained until all work is completed for each project.
3. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
4. All construction debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
5. Turbid de-watering water associated with in-water work shall not be discharged directly to waters of the state, including wetlands. Turbid de-watering water shall be routed to an upland area for on-site or off-site settling.
6. Clean de-watering water associated with in-water work that has been tested and confirmed to meet water quality standards may be discharged directly to waters of the state including wetlands. The discharge outfall method shall be designed and operated to as not to cause erosion or scour in the stream channel, banks, or vegetation.

### Equipment & Maintenance

7. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state including wetlands. If a staging area must be located within 50 feet of waters of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Permit Coordinator before placing the staging area in the setback area.
8. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its use around waters of the state, including wetlands.
9. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
10. 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.
11. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters. The applicant shall set up a designated area for washing down equipment.

### Shoreline Restoration/Habitat Creation

12. Any excavation or grading activities below OHWM shall use BMPs to control and contain turbidity.
13. The Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.
14. Material, such as but not limited to gravel, sand, cobbles, shall not be end dumped directly into state waters but placed in a controlled manner so as to minimize turbidity.
15. Removal of creosote pilings shall comply with the most current Washington State Department of Natural Resources Best Management Practices for Creosote Pile Removal & Disposal.
16. Water left in the containment on the barge shall not be discharged into waters of the state.
17. All disturbed river, stream, or lake shoreline areas shall be protected from temporary erosion using best management practices (BMPs) until stabilized by vegetation.

18. The Applicant shall not use polyacrylamide on exposed or disturbed soil at the mitigation sites.
19. The Applicant shall not use hay or straw on exposed or disturbed soil at mitigation sites unless it is weed free.

**F. Wetlands**

1. The Applicant shall ensure that no material is stockpiled within existing wetlands and their buffers at the aquatic mitigation site at any time, unless approved by Ecology.
2. The Applicant shall ensure that no construction debris is deposited within existing wetland and their buffers at the aquatic mitigation site at any time, unless approved by Ecology.

**G. Emergency/Contingency Measures**

1. The Applicant shall develop and implement a spill prevention and containment plan for this project and shall have spill cleanup material available on site at all times during construction.
2. Any work that produces conditions causing distressed or dying fish, or causing any discharge of oil, fuel, or chemicals into state waters, or onto land with potential for entry into state waters is prohibited. If such work occurs, the Applicant shall immediately take the following actions:
  - a) Cease operations at the location of the violation;
  - 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 a discharge of oil, fuel, or chemicals into state waters, or onto land with potential for entry into state waters, begin containment and cleanup efforts immediately and complete them as soon as possible. This work shall take precedence over normal work. Cleanup shall include proper disposal of any spilled material and used clean up materials.
  - d) Immediately notify Ecology's Northwest Regional Spill Response Office at 425-629-7000, **and** within 24 hours of spills or other events to Ecology's Federal Project Coordinator at 360-407-7298.
  - e) Immediately notify the National Response Center at 1-800-424-8802.
  - f) Submit a detailed written report to Ecology within (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. Notify Ecology's Northwest Regional Cleanup Program and Regional Spill Office at 425-649-7000 if chemical containers, (e.g. drums) are discovered on-site or any conditions present indicating disposal or burial of chemicals on-site that may impact surface water or ground water.

### YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001 (2).

To appeal you must do the following within 30 days of the date of receipt of this Order:

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

### ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

## CONTACT INFORMATION

Please direct all questions about this Order to:

Penny Kelley  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98503-7600  
360-407-7298  
[pkel461@ecy.wa.gov](mailto:pkel461@ecy.wa.gov)

## MORE INFORMATION

### **Pollution Control Hearings Board Website**

[www.eho.wa.gov/Boards\\_PCHB.aspx](http://www.eho.wa.gov/Boards_PCHB.aspx)

### **Chapter 43.21B RCW - Environmental Hearings Office – Pollution Control Hearings Board**

<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

### **Chapter 90.48 RCW – Water Pollution Control**

<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

### **Chapter 173.204 WAC – Sediment Management Standards**

[www.ecy.wa.gov/biblio/wac173204.html](http://www.ecy.wa.gov/biblio/wac173204.html)

### **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**

[www.ecy.wa.gov/biblio/wac173200.html](http://www.ecy.wa.gov/biblio/wac173200.html)

### **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**

[www.ecy.wa.gov/biblio/wac173201A.html](http://www.ecy.wa.gov/biblio/wac173201A.html)

## SIGNATURE



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

Feb 29, 2012  
Date



Water Quality Certification Order #9038  
Statement of Understanding

I, \_\_\_\_\_, state that, I will be involved as a WA DNR employee or an agent or contractor for Washington State Department of Natural Resources or a WSDOT employee or an agency or contractor for the Washington Department of Transportation for the South Lake Washington Shoreline Restoration project in King County, WA. I further state that I have read and understand the relevant conditions of Washington Department of Ecology **Water Quality Certification Order # 9038** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company

\_\_\_\_\_  
Phone number

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, and Zip Code

