



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

December 29, 2006

REGISTERED MAIL
RB 670 438 109 US

City of Langley & The Port District of South Whidbey Island
Attn: Donna Keeler
PO Box 366
Langley, WA 98260

RE: Water Quality Certification Order #3237 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers (Corps) Reference #200500396 for Phil Simon Park Boat Launch Improvement Project, Saratoga Passage, Island County, Washington

Dear Ms. Keeler:

On March 31, 2005, the City of Langley & The Port District of South Whidbey Island 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 (CWA) for the proposed Phil Simon Park Boat Launch Improvement project. A revised JARPA was submitted to Ecology on March 16, 2006, and on August 31, 2006. The project proposes to improve the existing boat ramp, extend existing wing walls seaward, add a gangway ramp shore connection platform and float, remove 11 creosote-treated piles, restore and enhance the beach, install native plants, and associated upland improvements. The U.S. Army Corps of Engineers issued a joint public notice for an individual Section 404 and Section 10 Permit on October 17, 2005, for the proposed project.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the JARPA received on August 31, 2006, and the October 17, 2005, 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.

On October 19, 2005, the City of Langley & The Port District of South Whidbey Island, submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). On April 7, 2006, Ecology and the City of Langley & The Port District of South Whidbey Island jointly requested a CZM extension from the Corps. Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the City of Langley & The Port District of South Whidbey Island's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon the City of Langley & The Port District of South Whidbey Island's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.



Donna Keeler
December 29, 2006
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If you have any questions, please contact Rebekah Padgett at (425) 649-7129 or email at rpad461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Geoff Tallent
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:rrp:cja

Enclosure

cc: Susan Powell, U.S. Army Corps of Engineers
Doug Thompson, Washington Department of Fish and Wildlife
Bob Snyder, City of Langley

e-cc: Penny Keys – HQ
Loree' Randall – HQ
Betty Renkor – NWRO
Susan Meyer – NWRO

IN THE MATTER OF GRANTING A) ORDER #3237
WATER QUALITY) Corps Reference No. 200500396
CERTIFICATION TO) Phil Simon Park Boat Launch Improvement
City of Langley & The Port District of) Project; Saratoga Passage, City of Langley,
South Whidbey Island) Island County, Washington.
in accordance with 33 U.S.C. 1341)
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: City of Langley & The Port District of South Whidbey Island
Attn: Donna Keeler
PO Box 366
Langley, WA 98260

On March 31, 2005, the City of Langley & The Port District of South Whidbey Island submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A revised JARPA was submitted to Ecology on March 16, 2006, and on August 31, 2006. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on October 17, 2005.

The proposed project at Phil Simon Park will be conducted in two phases and includes:

- Improve the existing boat ramp by steepening the ramp grade by adding crushed rock fill overtop the existing ramp and then a new concrete ramp;
- Extend existing wing walls seaward to retain the consolidated gravel fill over the existing ramp;
- Add a 4-foot-wide by 30-foot-long grated gangway ramp, a shore connection platform supported by a concrete or steel pile landward of Mean Higher High Water, and a 6.5-foot-wide by 60-foot-long float anchored by three 12-inch-diameter steel guide piles; and
- Associated upland improvements.

Mitigation for the proposed work includes:

- Remove 11 creosote-treated piles along the south side of the ramp; and
- Restore and enhance the beach by removing an existing bulkhead on the south side of the boat launch and replacing it with native dune grasses and salt-tolerant vegetation. Existing large woody debris will remain on the beach.

The project is located at Phil Simon Park, Langley, Washington, in Section 34, T. 30 N., R. 3 E., WRIA 6.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, 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 not violate 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:

- A1. For purposes of this Order, the term "Applicant" shall mean the City of Langley & The Port District of South Whidbey Island and its agents, assignees and contractors.

- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #3237 and Corps Reference # 200500396.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on August 31, 2006. 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.
- A4. 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.
- A5. This Order shall be rescinded if the US Army Corps of Engineers does not issue an individual Section 404 permit.
- A6. This Order does not exempt, and is provisional upon, compliance with other statutes and codes administered by federal, state, and local agencies.
- A7. 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.
- A8. 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.
- A9. 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.
- A10. 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 or mitigation sites.

- A11. 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.
- A12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

B. Water Quality Conditions:

- B1. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-210 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize a temporary turbidity exceedance beyond the limits established in WAC 173-201A-210(1)(e)(i). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup or surface waters or sediments occurring as a result of project construction or operations.
- B2. Turbidity shall be visually assessed and recorded at a minimum of every four (4) hours during periods of active in-water work. Monitoring points shall be at the point of compliance as specified in WAC 173-201A-210(1)(e)(i), which allows a 150-foot temporary mixing zone for turbidity resulting from disturbance of in-place sediments in Saratoga Passage, outside the area of influence of the inwater work, and at the discharge point. A turbidimeter is recommended, however, visual gauging of turbidity is acceptable. Visible project-related turbidity at 150 feet from the discharge point is considered to be an exceedance of the standard. If an exceedance of 5NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a ten (10) percent increase in turbidity when the background turbidity is more than 50 NTU, occurs at 150 feet from the project site, modify the activity causing the problem and continue to monitor every four (4) hours. If exceedances occur with two (2) consecutive measurements (four (4) hours apart), stop the activity causing the turbidity until the problem is resolved.

C. Conditions for In-Water and Over-Water Construction Activities:

General Conditions:

- C1. Construction stormwater, sediment, and erosion control BMPs (*e.g.*, filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.

- C2. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- C3. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- C4. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- C5. During construction, a containment boom 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 construction activities. Oil absorbent materials shall be employed if 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.
- C6. During construction the Applicant shall have a boat available on site at all times to retrieve debris from the water.
- C7. All manmade debris on the beach within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state.
- C8. If cast in place, wet concrete/grout shall be prevented from entering waters of the state. Forms for any concrete/grout structure shall be constructed to prevent leaching of wet concrete/grout. Impervious materials shall be placed over any exposed concrete/grout not lined with the forms that will come in contact with state waters. Forms and impervious materials shall remain in place until the concrete/grout is cured.
- C9. Project activities, excluding pile extraction, shall not occur when the project area, including the work corridor, is inundated by tidal waters.
- C10. No heavy equipment or construction materials shall be parked or stored on the beach, or seaward of the ordinary high water mark.
- C11. Project activities shall be conducted to minimize siltation of the beach area and bed.
- C12. The Applicant shall operate the barge(s) and tug in deep water so as to minimize nearshore propeller wash impacts such as suspension of nearshore sediments.

Piling Removal Conditions:

- C13. All creosote piling shall be removed by vibratory extraction. In the event pilings break off during extraction, the remaining piling may be removed by using a clamshell bucket or a chain.
- C14. All existing creosote-treated pilings shall be completely extracted, removed from the water, and disposed of at an approved upland disposal site. If the pilings are unable to be completely removed they shall be cut off at a minimum of two (2) feet below grade and the hole capped with clean sand.
- C15. Work surface on the barge deck shall include a containment basin for piles and any 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.
- C16. Piles removed from substrate: the pile shall be moved immediately from the water onto the barge. 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.

Pile Driving:

- C17. All new pilings shall be steel or concrete.
- C18. Steel pilings shall be installed using a vibratory pile driving device or a drop hammer pile driver.
- C19. The Applicant shall employ a bubble curtain during installation of steel 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.

D. Project Mitigation:

- D1. Impacts to aquatic resources shall be mitigated through measures described in the following documents, except as modified by this Order:
- Page 5 and depicted on Figures 8, 12, and 13 of the biological evaluation by Marine Surveys and Assessments, Inc., dated January 18, 2006, for City of Langley; and
 - *Restoration and Monitoring Plan – City of Langley Boat Launch Renovation Planting*, undated (received October 11, 2006).

- D2. In addition to conditions in the above-referenced documents, the following requirements shall be conditions of this Order:
- a. Timing: Construction and installation of compensatory mitigation must occur before or at the same time as project impacts on aquatic resources, or at the earliest planting season after project impacts.
 - b. Baseline Monitoring Report: A baseline monitoring report documenting the final design of the mitigation area must be prepared when site construction and planting are completed. The report shall include the following:
 - i. Vicinity map showing site access.
 - ii. Drawings that clearly identify in plan view the location of the planted area.
 - iii. The installed planting scheme showing approximate locations of plants and the time of planting.
 - iv. Photographs of the area taken from permanent reference points.
 - v. Locations of photopoints, and sampling sites.
 - vi. A description of any changes to the mitigation plan that occurred during construction.

A copy of the baseline monitoring report shall be sent to Susan Meyer, Wetland Specialist at Ecology, 3190 160th Avenue SE, Bellevue, WA 98008-5452, within 60 days of completing construction, and in no case later than November 30, 2007.
 - c. Monitoring: Monitoring of vegetation shall be done every year after the initial planting for five (5) years, with monitoring reports submitted to Ecology annually. Monitoring shall include representative photos taken from permanent locations and measures of vegetation cover as described in the *Restoration and Monitoring Plan* (received October 11, 2006). The mortality of all planted woody species shall be recorded either by collecting data on each of the individual plantings or by a statistically sound sampling. **All monitoring reports shall be submitted to Susan Meyer, Wetland Specialist at Ecology, 3190 160th Avenue SE, Bellevue, WA 98008-5452.** Reports shall display the Order #3237, and Corps Reference #200500396.
 - d. Performance Standards: Plants shall be maintained or replaced as needed to ensure survival of 80% of all planted trees and shrubs for five (5) years after planting. All invasive non-native species on the site shall be eradicated throughout the monitoring period.
 - e. Maintenance: The Applicant is responsible for maintenance and protection of the native vegetation planting area both throughout and after the 5-year monitoring period. This includes 100% replacement of woody plants that die during the first year after planting and subsequent replacement sufficient to ensure an 80% survival rate at

the end of five (5) years. Maintenance shall also ensure that all invasive non-native species on the site are eradicated during the five (5) year monitoring period. If adverse site conditions or unforeseen problems cause plantings to grow poorly or die at a high rate, the Applicant shall analyze the cause and take corrective action such as irrigating, protecting trunks from gnawing rodents, etc.

E. Emergency/Contingency Measures:

- E1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- E2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- E3. 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.
- E4. 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 shall immediately take the following actions:
 - a. Cease operations at the location of the violation or spill.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
 - d. 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.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

F. Timing Requirements

- F1. This Order is valid until all compliance requirements in this document have been met.
- F2. In-water work shall be subject to timing limitations imposed by WDFW. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

G. Reporting and Notification Requirement Conditions

- G1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #200500396, Order #3237 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

H. Appeal Process

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

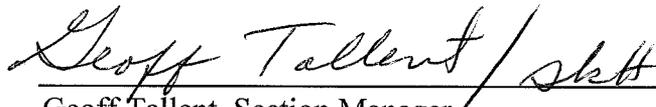
The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608.

In addition, please send a copy of your appeal to:
Federal Permit Appeals Coordinator
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

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

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 December 29, 2006 at Bellevue, Washington.

A handwritten signature in cursive script that reads "Geoff Tallent / skt". The signature is written in black ink and is positioned above a horizontal line.

Geoff Tallent, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

**CITY OF LANGLEY & THE PORT DISTRICT OF SOUTH WHIDBEY ISLAND
PHIL SIMON PARK BOAT LAUNCH IMPROVEMENT PROJECT
Water Quality Certification Order #3237**

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

I have read and understand the conditions of Order #3237 Section 401 Water Quality Certification for the City of Langley & The Port District of South Whidbey Island Phil Simon Park Boat Launch Improvement Project. I have also read and understand all permits, plans, documents, and approvals associated with the City of Langley & The Port District of South Whidbey Island Phil Simon Park Boat Launch Improvement Project referenced in this order.

Signature

Date

Title

Company