



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

December 15, 2006

REGISTERED MAIL
RB 670 438 090 US

Seattle Parks Department
Attn: Toby Ressler
800 Maynard Avenue South, Suite 300
Seattle, WA 98134

**RE: Water Quality Certification Order #3200 for U.S. Army Corps of Engineers (Corps)
Reference #200500969, South Lake Union Park Redevelopment Project, Lake
Union, King County, Washington**

Dear Mr. Ressler:

On September 2, 2005, Seattle Parks Department 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 Union Park Redevelopment Project. The U.S. Army Corps of Engineers issued a joint public notice on September 26, 2005, for the proposed project. On March 27, 2006, a revised JARPA was submitted to Ecology. The project proposes work in two phases. Phase 1 includes replacement of an existing bulkhead with a new steel sheet pile bulkhead (placed approximately 6 feet landward of the existing bulkhead) and construction of a pedestrian bridge over Waterway 3. Phase 2 includes construction of a boat launching beach; removal of an existing retaining wall; shoreline stabilization including placement of vegetation; removal of in-water debris, approximately 200 wood piling, and 9 wood dolphins (approximately 5 to 7 piles each); installation of two 7-pile untreated wood dolphins; habitat improvements/enhancements; and associated upland activity.

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.

This letter also serves as the State response to the Corps of Engineers' September 26, 2005 Public Notice.

Seattle Parks Department
December 15, 2006
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If you have any questions, please contact Rebekah Padgett at 425-649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Geoff Tallent
Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:rrp:cja
Enclosure

cc: Ann Urich, U.S. Army Corps of Engineers
Stewart Reinbold, Washington Department of Fish and Wildlife
Derrick Toba, Washington Department of Natural Resources
Jim Muck, USFWS/NMFS
Austin Pratt, U.S. Coast Guard
Richard Robohm, Ecology

e-cc: Penny Keys – HQ
Loree' Randall – HQ

IN THE MATTER OF GRANTING A) ORDER #3200
WATER QUALITY) Corps Reference No. 200500969
CERTIFICATION TO) South Lake Union Park Redevelopment Project,
Seattle Parks Department) Lake Union, located in Seattle, King County,
in accordance with 33 U.S.C. 1341) Washington.
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Seattle Parks Department
Attn: Toby Ressler
800 Maynard Avenue South, Suite 300
Seattle, WA 98134

On September 2, 2005, Seattle Parks Department submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on September 26, 2005. On March 27, 2006, a revised JARPA was submitted to Ecology.

The proposed project entails work in two phases. Phase 1 includes replacement of an existing bulkhead with a new steel sheet pile bulkhead (placed approximately 6 feet landward of the existing bulkhead) and construction of a pedestrian bridge over Waterway 3. Phase 2 includes construction of a boat launching beach; removal of an existing retaining wall; shoreline stabilization including placement of vegetation; removal of in-water debris, approximately 200 wood piling, and 9 wood dolphins (approximately 5 to 7 piles each); installation of two 7-pile untreated wood dolphins; habitat improvements/enhancements; and associated upland activity. The project is located at 860 N. Terry Avenue and 1010 Valley Street, Seattle, King County, Sections 29 and 30, Township 25N, Range 48E, WRIA #8.

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 Seattle Parks Department, 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 #3200 and Corps Reference #200500969.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on March 27, 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 Corps does not issue a 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. Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3).
- B2. In-Water Construction Water Quality Sampling and Monitoring: An in-water construction Water Quality Monitoring Plan shall be developed and implemented. "In-water construction" is defined as all work below the ordinary high water mark of Lake Union. Ecology may require changes and modifications to the Plan. The Plan shall include the following minimum requirements:
- a. Locations of samples: Locations of water quality sampling sites shall be identified and described in the plan and on a map of the project area. At a minimum, sampling shall take place at the point of compliance as specified in WAC 173-201A-110(3), which allows a 150 foot temporary mixing zone for turbidity resulting from disturbance of

in-place sediments in Lake Union. Background samples shall be collected outside the area of influence of the inwater work. Background samples shall be collected at the same frequency as the point of compliance samples.

- b. Number of samples: Samples shall be collected a minimum of every two (2) hours throughout the first day of in-water construction activity. Subsequent sampling is dependent on monitoring results, but shall be a minimum of three (3) times per day during in-water activity if no exceedances are detected. Additional sampling may be required if turbidity exceedances are observed or measured to be above the temporary mixing zone criteria of WAC 173-201A-110(3).
- c. Parameter to be sampled: Turbidity shall be sampled for this project.
- d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.
- e. Detection of exceedances: Water quality standards for turbidity in Lake Class waters are as follows: turbidity shall not exceed 5 NTU over background conditions. If exceedances of this standard at the point of compliance specified in WAC 173-201A-110(3) are detected through water quality sampling and monitoring, the Applicant shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, the Applicant shall assess the efficacy of the site Best Management Practices (BMPs) and update or improve the BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity exceedance.
- f. Reporting: If no exceedances are detected, results of water quality sampling, as determined by the Water Quality Protection Plan, shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.
- g. Notification of exceedances: Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #3200, Attn: 401/CZM Federal Project Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:
 - i. A description of the nature and cause of non-compliance, including the quantity and quality of any unauthorized discharges;
 - ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance; and
 - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.

- iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, photographs, and any other pertinent information.

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. The Applicant shall implement and comply with the Construction Stormwater General Permit #WAR-007117.
- C3. 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.
- 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, contaminated sediments and soils shall not be used as backfill material.
- C6. 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.
- C7. Construction material shall be stockpiled away from the shoreline areas.
- C8. The Applicant shall take all necessary measures to minimize the alteration or disturbance of existing upland and riparian vegetation.
- C9. Vehicles shall be cleaned of mud, rock, and other material before entering a paved public highway so that tracking of sediment onto the highway does not occur.

Work in Fresh Waters:

- C10. During construction, 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 construction activities. All accumulated debris shall be collected and disposed of upland at an approved disposal site.
- C11. During construction the Applicant shall have a boat available on site at all times to retrieve debris from the water.

- C12. All manmade debris that has been deposited 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. Abandoned concrete pipes, miscellaneous concrete slabs, and angular rocks in the construction work corridor that have washed into freshwater areas shall be removed from the beach.
- C13. 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.
- C14. Oil-boomed, bottom-weighted sediment curtains shall be deployed and maintained in a functional manner to contain suspended sediments at the work site during in-water work.
- C15. The Applicant shall operate the barge(s) and tug in deep water so as to minimize nearshore propeller wash impacts such as suspension of lake bottom sediments.

Piling Removal Conditions:

- C16. All piling shall be removed by vibratory extraction, or a cable and crane system. In the event pilings break off during extraction, the remaining piling may be removed by using a clamshell bucket or a chain.
- C17. Work surface on the barge deck or on uplands 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.
- C18. All existing creosote-treated pilings shall be completely extracted, removed from lake waters, 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.
- C19. Piles removed from substrate: the pile shall be moved immediately from the water into the barge or onto uplands. 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 Conditions:

- C20. All new pilings installed in water shall be untreated wood.

D. Sediment Sampling Conditions:

- D1. Construction of Phase 2 work shall not begin until sediment sampling results have been reviewed by Ecology. Ecology may require additional measures for this work based on the results of this sediment sampling.
- D2. Sediment sampling shall be accomplished per the *Draft Sampling and Analysis Plan, South Lake Union Park Development Project, Phase 1 Shoreline Stabilization, Seattle, Washington*, dated August 12, 2005, prepared by Shannon & Wilson, Inc.
- D3. **Sampling Data Submittal – Sediments**
- a. Sediment sampling data for all required fields listed in the current version of SEDQUAL (Sediment Quality Information System) shall be submitted to Ecology electronically in SEDQUAL data entry templates including, but not limited to REFERENCE, SURVEY, STATION, SAMPLE, CHEMISTRY, BIOASSAY and BIOASSAY CONTROL. The current version of SEDQUAL can be found at <http://www.ecy.wa.gov/programs/tcp/smu/sedqualfirst.htm>.
 - b. Station locations shall include latitude/longitude coordinates in NAD83 HARN south zone feet and chemical concentration data shall be reported in dry weight units.
 - c. Electronic SEDQUAL template data must be verified to be compatible with the current version of SEDQUAL which uses ASCII protocol, comma delimited text files prior to delivery to Ecology. Verification shall be conducted by the consultant importing each of the data templates into their SEDQUAL database, correcting any errors, and then exporting the corrected final templates for delivery to Ecology.
 - d. Sediment sampling data shall also be submitted to Ecology in hardcopy reports containing data tables in both dry weight and total organic carbon normalized units in comparison to applicable state regulatory criteria. Electronic SEDQUAL template data shall be submitted to Ecology simultaneously with the hardcopy report.

E. Project Mitigation:

- E1. Impacts to aquatic resources shall be mitigated through measures described in the following documents, except as modified by this Order:
- Plan sheets L4.0, "Planting Plan – West;" L4.1, "Planting Plan – East;" and L4.2, "Plan Enlargements – Lake Edge Planting," dated 06/21/06 (these sheets correspond to revised Figures 5-1 through 5-4, dated June 2006, and included in the revised project description for South Lake Union Park from the U.S. Army Corps of Engineers bearing the date July 7, 2006).
 - Revised figures 5-1 through 5-4.

E2. 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 at the first planting opportunity (late fall, winter, or early spring) after grading is complete for Phase 2.
- 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 and square footage 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 Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452, within 60 days of completing construction for Phase 2.

- c. Field Supervision: Site preparation shall be inspected and plant installation shall be field-supervised by a qualified consultant to ensure that plants are healthy, meet specifications and are appropriately placed.
- d. Monitoring: Monitoring shall take place four (4) times over a period of five (5) years, with monitoring performed in years 1, 2, 3, and 5. Monitoring reports should document plant survival and vigor and include representative photos from permanent locations. **Copies of all monitoring reports shall be submitted to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452.** Reports shall display the Order #3200.
- e. Performance Standards: The City of Seattle's July 6, 2006, Mitigated Determination of Non-Significance requires 80% survival of plantings after five (5) years. The project also shall meet the following performance standards:
 - Survival of plantings after two (2) years: 90%; survival after three (3) years: 85%.
 - Invasive non-native species shall have a maximum combined cover of less than 15 percent for all non-native species (including Himalayan and evergreen blackberry, Scots broom, etc.) throughout the monitoring period.

- f. Maintenance: The Applicant is responsible for maintenance and protection of the native vegetation planting area both throughout and after the 5-year monitoring period. All plants that fail to survive for one (1) year after planting shall be replaced before or at the beginning of the next growing season.

F. Emergency/Contingency Measures

- F1. The Applicant shall develop a spill prevention and containment plan for all aspects of this project.
- F2. The facility 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.
- F3. 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.
- F4. 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.
 - 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.
- F5. 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.
- F6. 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.

G. Timing Requirements

- G1. This Order is valid until all compliance requirements in this document have been met.
- G2. 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.

H. Notification Requirements

- H1. 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 #200500969, Order #3200, can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

I. 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 15, 2006 at Bellevue, Washington.

Geoff Tallent (GT)

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

ATTACHMENT A

**SEATTLE PARKS DEPARTMENT
SOUTH LAKE UNION PARK REDEVELOPMENT PROJECT
Water Quality Certification Order #3200**

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

I have read and understand the conditions of Order #3200 Section 401 Water Quality Certification for the South Lake Union Park Redevelopment Project. I have also read and understand all permits, plans, documents, and approvals associated with the South Lake Union Park Redevelopment Project referenced in this order.

Signature

Date

Title

Company