



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

October 13, 2006

REGISTERED MAIL

RB 670 437 987 US

City of Medina
Attn: Joe Willis, Director of Public Works
501 Evergreen Point Road
Medina, WA 98039

**RE: Water Quality Certification Order #3199 for U.S. Army Corps of Engineers (Corps)
Reference #200500994 to demolish and replace two piers, remove a concrete bulkhead, and
restore a rock revetment and rock jetty, Lake Washington, King County, Washington.**

Dear Mr. Willis:

On February 24, 2006 you 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 City of Medina Beach Park Improvements. The project proposes to demolish and replace two piers, remove a concrete bulkhead, and restore a rock revetment and rock jetty. The U.S. Army Corps of Engineers issued a joint public notice for an individual Section 404 and Section 10 Permit on January 11, 2006, for the proposed project.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the JARPA and the January 11, 2006, 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' January 11, 2006 Public Notice.

If you have any questions, please contact Rebekah Padgett at 425-649-7129, rp461@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
Stewart Reinbold, Washington Department of Fish and Wildlife
e-cc: Penny Keys – HQ
Loree' Randall – HQ
Betty Renkor – NWRO
Richard Robohm – NWRO



IN THE MATTER OF GRANTING A) ORDER #3199
WATER QUALITY) Corps Reference No. 200500994
CERTIFICATION TO) City of Medina Beach Park Pier Removal and
City of Medina) Replacement, Bulkhead Removal, Restoration of
in accordance with 33 U.S.C. 1341) Rock Revetment and Jetty, Lake Washington,
(FWPCA § 401), RCW 90.48.120, RCW) located in King County, Washington.
90.48.260 and Chapter 173-201A WAC)

TO: City of Medina
Attn: Joe Willis, Director of Public Works
501 Evergreen Point Road
Medina, WA 98039

A joint public notice was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on January 11, 2006. On February 24, 2006, the City of Medina submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification.

The proposed project entails: demolish and replace two piers, remove a concrete bulkhead, and restore a rock revetment and rock jetty. The existing piles (approximately 44 creosote-treated piles) and decking of the two piers will be replaced with approximately 26 8-inch-diameter steel pipe piles and open grate decking. The proposed south dock will have overwater coverage of 1,222 square feet and the north dock will have overwater coverage of 360 square feet. The concrete bulkhead will also be demolished and removed. It will be replaced by a series of coves and shallow water beach. The existing jetty will be reconstructed with open troughs covered by grating to allow improved water circulation. Up to 700 cubic yards of spawning gravel will be installed along the shoreline waterward of the ordinary high water mark. Native plantings also will be provided in the shoreline and upland areas. The project is located at 501 Evergreen Point Road, Medina, King County, Washington, Section 36, Township 25 North, Range 4 East, 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 the City of Medina, 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 #3199 and Corps Reference #200500994.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on February 24, 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 Section 404 and Section 10 permits.
- 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. Lake Washington is classified as Lake Class and the criteria of that class apply except as specifically modified by this Order. 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: Prior to the commencement of any construction, the Applicant shall submit to Ecology for its review and written approval a Water Quality Monitoring Plan. "In-water construction" is defined as all work below the ordinary high water mark (OHWM) of Lake Washington. 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 Washington. 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 Monitoring 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 #3199, 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.
- B3. Project activities shall be conducted to minimize siltation of the beach area and bed.

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. Work shall be accomplished per *Medina Beach Park Maintenance and Repair Project Biological Evaluation*, dated August 12, 2005, prepared by AMEC Earth and Environmental; *Shoreline Vegetation Monitoring Plan for Medina Beach Park Maintenance and Repair Project* (undated) received by Ecology on February 24, 2006; and project plan sheets 1-12, dated September 1, 2006 prepared by OTAK, except as modified by this Order. If discrepancies exist between plans cited above, the most recent version is the approved document.

- 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. 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.
- C5. 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.

Work in Fresh Waters:

- C6. 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.
- C7. Petroleum spill containment materials shall be deployed in the water surrounding active work barges at all times.
- C8. During construction the Applicant shall have a boat available on site at all times to retrieve debris from the water.
- C9. The Applicant shall use tarps or other containment method when cutting or drilling over water to prevent sawdust and other materials from entering the water.
- C10. 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.
- C11. 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.
- C12. A silt curtain shall be deployed and maintained in a functional manner to contain suspended sediments at the work site during bulkhead and pier removal/installation work.

- C13. 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:

- C14. All piling shall be removed by vibratory extraction or a choker system. In the event pilings break off during extraction, the remaining piling may be removed by using a clamshell bucket or a chain.
- C15. All existing creosote-treated pilings shall be completely extracted, removed from fresh 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.
- C16. 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.
- C17. Piles removed from substrate: the pile shall be moved immediately from the water into 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:

- C18. All new pilings shall be steel or concrete.
- C19. For any impact pile driving or proofing, the Applicant shall place a 6-inch-thick wood block between the piling and the impact hammer or employ a bubble curtain around the pile during pile driving operations.

D. Project Mitigation:

- D1. Impacts to aquatic resources shall be mitigated through measures described in the following document, except as modified by this Order:
- "Plan Sheets 1, 2, 6, and 12 of revised plans by Otak, Inc., dated 9/1/2006, for Medina Beach Park."
- 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 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.

Two (2) copies of the baseline monitoring report shall be sent to Richard Robohm, wetland specialist at Ecology, 3190 160th Avenue SE, Bellevue, WA 98008-5452, within 60 days of completing construction, and in no case later than April 30, 2007.

- c. Site Protection: Permanent protection of the native vegetation planting area shall be recorded on the appropriate property deed. Documentation that this requirement has been fulfilled shall be provided to Richard Robohm at Ecology at the same time as the as-built report.
- d. Field Supervision: Site preparation shall be inspected and plant installation shall be field-supervised by a qualified wetland consultant to ensure that plants are healthy, meet specifications and are appropriately placed.
- e. Monitoring: Monitoring of vegetation shall be done every year after the initial planting for five (5) years, with monitoring reports submitted to Ecology in years 1, 3, and 5. Monitoring shall include representative photos taken from three separate permanent locations and measures of vegetation cover at three separate 1-square-meter quadrats. These quadrats shall be randomly offset by 2 to 3 feet from the edge of the three discontinuous restoration planting areas: (1) north of the footpath and west of the steps; (2) north and east of the footpath and steps; and (3) south and west of the footpath. The mortality of all planted woody species shall be recorded either by collecting data on each of the 171 individual plantings or by a statistically sound sampling. **Two (2) copies of all monitoring reports shall be submitted to Richard Robohm, wetland specialist at Ecology, 3190 160th Avenue SE, Bellevue, WA 98008-5452.** Reports shall display the Order #3199, and Corps Reference #200500994.

- f. Performance Standards: Plants shall be maintained or replaced as needed to ensure survival of 90% of all planted trees and shrubs for five (5) years after planting. 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. Any plant on the King County noxious weed list (updated annually) for any year shall have a maximum cover of 0% throughout the monitoring period.

- g. 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 a 90% survival rate at the end of five (5) years. Maintenance shall be adequate to ensure that the combined cover of non-native species is less than 15% and that all King County noxious weeds are extirpated. 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. This Plan shall be submitted to Ecology for review 30 days prior to beginning construction.

- 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 #200500994, Order #3199, 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.

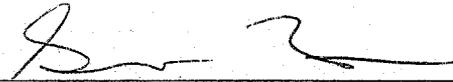
In addition, please send a copy of your appeal to:

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 October 13, 2006 at Bellevue, Washington.



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

ATTACHMENT A

**CITY OF MEDINA
MEDINA BEACH PARK IMPROVEMENTS PROJECT
Water Quality Certification Order #3199**

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

I have read and understand the conditions of Order #3199 Section 401 Water Quality Certification for the City of Medina, Medina Beach Park Improvement Project. I have also read and understand all permits, plans, documents, and approvals associated with the City of Medina, Medina Beach Park Improvement Project referenced in this Order.

Signature

Date

Title

Company