



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

March 26, 2007

REGISTERED MAIL

RB 670 438 231 US

Wards Cove
Attn: William M. Weisfield
PO Box 5030
Seattle, WA 98105

Dear Mr. Weisfield:

RE: Water Quality Certification Order #4168 for U.S. Army Corps of Engineers (Corps) Reference #200501127 to Demolish Existing Overwater and Upland Structures and Construct New Marina and Floating Home Facility, Lake Union, Seattle, King County, Washington

On September 23, 2005, Wards Cove 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 Wharf Demolition and Marina and Floating Home Construction project. A revised JARPA for this project was submitted on September 20, 2006. The project proposes to demolish existing overwater and upland structures, construct new overwater moorage facilities for a 10-slip marina and a new 12-unit floating home facility, associated upland work, and habitat improvements along the shoreline. Mitigation for the proposed work includes removal of approximately 558 creosote-treated timber piles and enhancement of the project shoreline with fish mix gravels and native plantings. The Corps issued a joint public notice for a Section 404 and Section 10 Permit on January 3, 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 received on September 20, 2006, and the January 3, 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.

On September 23, 2005, Wards Cove, submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). On March 3, 2006, Ecology and Wards Cove 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 Wards Cove's determination that the proposed work is consistent with Washington's CZMP.



William M. Weisfield
March 26, 2006
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This concurrence is based upon Wards Cove's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.

This letter also serves as the State response to the Corps of Engineers' January 3, 2006, Public Notice.

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: Kristine Hansen, U.S. Army Corps of Engineers
Stewart Reinbold, Washington Department of Fish and Wildlife
Jeffrey A. Layton, P.E., Layton & Sell, Inc., P.S., Consulting Engineers

e-cc: Penny Keys – HQ
Loree' Randall – HQ
Richard Robohm – NWRO

IN THE MATTER OF GRANTING A) ORDER #4168
WATER QUALITY) Corps Reference No. 200501127
CERTIFICATION TO) Demolish Existing Overwater and Upland
Wards Cove) Structures and Construct New Marina and
in accordance with 33 U.S.C. 1341) Floating Home Facility; Lake Union, Seattle,
(FWPCA § 401), RCW 90.48.120, RCW) Snohomish County, Washington.
90.48.260 and Chapter 173-201A WAC)

TO: Wards Cove
Attn: William M. Weisfield
PO Box 5030
Seattle, WA 98105

On September 23, 2005, Wards Cove submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A revised JARPA for this project was submitted on September 20, 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 January 3, 2006.

The proposed work includes:

- Demolish existing overwater structures, including all or part of the existing timber wharf, piers, overwater buildings, and removal of approximately 558 creosote-treated timber piles;
- Demolish upland structures;
- Construction of new overwater moorage facilities for a 10-slip marina;
- Construction of a new 12-unit floating home facility;
- Renovation of existing buildings;
- Construction of new parking and landscape features;
- Construction of street improvements;
- Implementation of habitat improvements to the shoreline; and
- Replacement of an existing stormwater outfall.

Approximately 60 steel piles shall be installed to support the new structures, including 55 24-inch piles, one 18-inch pile, and four 12-inch piles.

Mitigation for the proposed work includes a decrease in overwater coverage of approximately 2,316 square feet, light-permeable grating incorporated in all floating piers greater than 6 feet wide, removal of approximately 558 creosote-treated timber piles, and enhancement of approximately 360 lineal feet of the project shoreline with fish mix gravels and native plantings.

The project is located at 88 East Hamlin Street, Seattle, Washington, in Sections 17 and 20 , T. 25 N., R. 4 E., 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 Wards Cove 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 #4168 and Corps Reference #200501127.

- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on September 20, 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-200 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-200(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. 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-200(1)(e)(i), 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-200(1)(e)(i).
 - 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 Core Summer Salmonid Habitat waters are as follows: turbidity shall not exceed 5 NTU over background conditions when the background is 50 NTU or less, or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. If exceedances of this standard at the point of compliance specified in WAC 173-201A-200(1)(e)(i) 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 #4168, 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 best management practices (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. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- C3. The Applicant shall obtain and comply with the Construction Stormwater General Permit for this project.
- C4. Work shall be accomplished per Sheets 1-32, Proposed Waterfront Improvements, dated September 19, 2005, revised October 10, 2006, received by Ecology on October 11, 2006; and the best management practices described on page 13 of the Biological Evaluation, prepared by Daniel Cheney, BioAquatics International LLC, dated September 19, 2005, received by Ecology on September 23, 2005, except as modified by this Order.
- C5. 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.
- 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. 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:

- C8. 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.
- 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. During construction, the Applicant shall have a boat available on site at all times to retrieve debris from the water.

- C11. All manmade debris that has been deposited below the Ordinary High Water Line within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Abandoned tires, metal debris, cables, submerged timbers and other debris in the construction work corridor that have washed into freshwater areas shall be removed from the project area.
- C12. 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.
- C13. A silt curtain shall be deployed and maintained in a functional manner to contain suspended sediments at the work site during installation of the new storm drain outfall and pier removal/installation work, including removal and driving of piling.
- C14. Project activities shall be conducted to minimize siltation of the beach area and bed.
- 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 nearshore sediments.

Piling Removal Conditions:

- C16. All piling shall be removed by vibratory extraction, or a crane barge system. In the event pilings break off during extraction, the remaining piling may be removed by using a chain or a compressed air or hydraulically-operated saw.
- 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, except for approximately 19 existing bearing piles under the existing wharf, 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. The approximately 19 existing bearing piles under the existing wharf shall be cut at approximately 1 foot above high lake level and permanently sealed with a durable covering.
- C20. 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.

- C21. All abandoned piling holes shall be filled and capped with substrate consistent with current existing natural surrounding substrate, sand, and/or clean 1-inch minus well-rounded gravel.

Pile Driving:

- C22. All new pilings shall be steel.

- C23. The pilings shall be installed using a vibratory pile driving device or an impact hammer pile driver.

- C24. 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. If any fish are seen to be in distress, work shall immediately cease and a bubble curtain shall be deployed before the driving is completed.

D. Floating Home Operations

- D1. The Applicant shall submit to Ecology for review a document describing long-term BMPs that will be implemented to be protective of water quality. This document shall be given to future floating home residents.

E. Project Mitigation—Plantings:

- E1. Impacts to aquatic resources shall be mitigated through measures described in the following documents, except as modified by this Order:
- Sheets 25-32 of the July 7, 2006, Proposed Waterfront Improvements plan set, as revised on October 10, 2006, and
 - Memorandum from Kristen Lundquist, Brumbaugh & Associates, to Richard Robohm, Department of Ecology, RE: Vegetation Monitoring, dated February 5, 2007.
- 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.

- 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.

- c. Field Supervision: Site preparation shall be inspected and plant installation shall be field-supervised by a qualified biologist or landscape professional 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 #4168.
- 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 performance standards described in the February 5, 2007, memorandum from Kristen Lundquist of Brumbaugh & Associates.
- 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 and implement a Spill Prevention and Containment Plan for all aspects of this project.
- F2. 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.
- 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 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.

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. Reporting and Notification Requirement Conditions

- 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 #200501127, Order #4168 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 March 26, 2007 at Bellevue, Washington.



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

ATTACHMENT A

**WARDS COVE
WHARF DEMOLITION AND MARINA AND FLOATING HOME
CONSTRUCTION PROJECT
Water Quality Certification Order #4168**

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

I have read and understand the conditions of Order #4168 Section 401 Water Quality Certification for the Wards Cove Wharf Demolition and Marina and Floating Home Construction Project. I have also read and understand all permits, plans, documents, and approvals associated with the Wards Cove Wharf Demolition and Marina and Floating Home Construction Project referenced in this order.

Signature

Date

Title

Company