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

July 2, 2007

REGISTERED MAIL
RB 670 438 903 US

Port of Seattle
Attn: David McCraney
Seaport Environmental Programs
PO Box 1209
Seattle, WA 98111

Dear Mr. McCraney:

RE: Water Quality Certification Order #4431 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers Reference #200601091, Terminal 30 Redevelopment and Terminal 91 Cruise Terminal Relocation Project, Duwamish East Waterway and Elliott Bay, King County, Washington

On September 22, 2006, the Port of Seattle 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 Terminal 30 Redevelopment and Terminal 91 Cruise Terminal Relocation project. The Port withdrew this application on February 13, 2007, and re-applied on March 21, 2007. The Corps issued a joint public notice for a Section 404 and Section 10 Permit on December 14, 2006, for the proposed project. A second joint public notice was issued on March 29, 2007, for re-submittal of the application.

The Terminal 30 redevelopment involves reactivation of container terminal use at the terminal and the consolidation of Terminals 25 and 30 into one container facility. The proposed project also will relocate cruise operations from Terminal 30 to a new cruise terminal to be constructed at Terminal 91, with two 1,200-foot-long berths to be provided at the south end of Pier 91.

Mitigation for the proposed work includes compensatory habitat mitigation at Terminal 91 to mitigate for conversion of 0.06 acre shallow subtidal habitat to subtidal habitat and installation of riparian planting along an approximately 500-foot portion of shoreline in the northwest corner of the North Bay of Smith Cove (west of Pier 91). The project also includes removal of approximately 104 creosote-treated piles at Terminal 30, and 120 creosote-treated piles at Terminal 91.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the March 21, 2007, JARPA and the March 29, 2007, 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 30, 2006, the Port of Seattle submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). On April 24, 2007, Ecology and the Port of Seattle 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 Port of Seattle's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon the Port of Seattle's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.

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: Jessica Winkler, U.S. Army Corps of Engineers
Jason Jordan, Port of Seattle
Laura Arber, Washington Department of Fish and Wildlife
Don Olmsted, Washington Department of Natural Resources
Cindy Rathbone, Washington Department of Natural Resources
Shandra O'Haleck, NOAA Fisheries
Ravi Sanga, U.S. Environmental Protection Agency
Patricia Garcia, City of Seattle
Shirley Burgdorf, US Fish and Wildlife
Alison O'Sullivan, Suquamish Tribe
Fred Felleman, Bluewater Network/Ocean Advocates
Glen St. Amant, Muckleshoot Indian Tribe
Gordon Thomson, King County Department of Natural Resources

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION/MODIFICATION TO Port of Seattle in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)))))))	**ORDER #4431** **Corps Reference No. 200601091** Terminal 30 Redevelopment and Terminal 91 Cruise Terminal Relocation Project; Duwamish East Waterway and Elliott Bay, King County, Washington.

TO: Port of Seattle
Attn: David McCraney
Seaport Environmental Programs
PO Box 1209
Seattle, WA 98111

On September 22, 2006, the Port of Seattle submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. The Port withdrew this application on February 13, 2007, and re-applied on March 21, 2007. 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 December 14, 2006. A second joint public notice was issued on March 29, 2007, for re-submittal of the application.

The proposed Terminal 30 Redevelopment and Terminal 91 Cruise Terminal Relocation project will take place at Terminal 30 in the East Waterway, and at Terminal 91 in Elliott Bay, Puget Sound. Terminal 30 is located at 2715 East Marginal Way South, Seattle, King County, Washington, in Section 7, Township 24 N., Range 4E., WRIA #9. Terminal 91 is located at 2201 West Garfield Street, Seattle, King County, Washington, in Section 26, Township 25 N., Range 3 E., WRIA #8.

The Terminal 30 redevelopment involves reactivation of container terminal use at the terminal and the consolidation of Terminals 25 and 30 into one container facility. Proposed work at Terminal 30 includes:

- Installation of up to 175 new 24-inch octagonal pre-stressed concrete piles to support the waterside crane beam and a section of the landside crane beam;

- Replacement of a fender system. Removal of the existing creosote-treated timber fender system includes removal of 155 fender piles (104 creosote-treated timber piles and 51 steel piles). The new fender system will be rubber faced with a steel panel installed at 60-foot intervals. The fenders will project approximately 4 to 6 feet from the face of the concrete and will be no greater than 6 feet wide, with a net reduction in overwater coverage of 3,095 square feet;

- Upgrade of an existing waterside crane beam;

- Application of asphalt pavement overlay to the apron of Terminal 30;

- Installation of a continuous steel sheet pile wall with a concrete pile cap landward of MHHW to reduce settlement and associated maintenance and to support the landside crane beam;

- Install a cast-in-place concrete slab to provide a gradual grade transition behind the bulkhead;

- Excavate approximately 1,400 cubic yards behind the existing landside crane beam at the yard/wharf interface in order to install the proposed landside sheet pile cap, crane beam, and transition slab;

- Retrofit 5 pile caps at Pier 28;

- Dredge approximately 59,000 cubic yards, to an elevation of -50 feet Mean Lower Low Water (MLLW), plus 1 foot allowable overdredge, in front of Terminal 30 to accommodate deep-draft container ships. The dredged material will be disposed of at an approved open-water disposal site in Elliott Bay; and

- Associated upland work including: contaminated soils cleanup, storm drainage modification and other utility work, site preparations, construction, and parking and transportation elements.

The proposed project also will relocate cruise operations from Terminal 30 to a new cruise terminal to be constructed at Terminal 91, with two 1,200-foot-long berths to be provided at the south end of Pier 91. Proposed work at Terminal 91 includes:

- Installation of two mobile passenger boarding gangway systems;

- Apron modifications and repairs to include removal of existing asphalt, removing and replacing existing structural elements, and new 100-ton mooring bollards;

- Replacement of Berth E and F timber pile fender system with a steel pile fender system. The replacement includes removal of approximately 120 existing timber piles and installation of approximately 120 16- to 18-inch-diameter steel piles, as well as replacement of the timber "eye-brow" at the apron bull rail with a steel system;

- Installation of a floating stand-off system at each berthing area to serve as a buffer between the cruise vessels and the vertical fender piles to provide the vessel-to-pier stand-off required to allow vessel provisioning. One of two alternatives will be used for the

floating stand-off system: A) Existing steel, 10-foot-wide by 40-foot-long by 7-foot-deep, Flexi-float breasting barges (eight per berth) will be relocated from Terminal 30 to Terminal 91, or B) Six new floating, foam-filled, 11-foot-diameter spherical fenders will be placed at each berth and an additional five steel piles will be placed in line with the existing fender pile at each fender (30 per berth);

- Dredge one berth area (west) along the southern portion of Pier 91 to accommodate the calling cruise vessels. Approximately 9,400 cubic yards of material will be removed to a depth of -35 feet MLLW, plus 1 foot allowable overdredge. The dredged material will be disposed of at an approved open-water disposal site in Elliott Bay; and

- Associated upland work including: contaminated soils cleanup, improved stormwater system and other utility work, site preparations, construction, and parking and ground improvements.

Mitigation for the proposed work includes:

- Compensatory habitat mitigation at Terminal 91 to mitigate for conversion of 0.06 acre shallow subtidal habitat to subtidal habitat. On-site mitigation includes placement of fill in the northwest corner of the West Berth at Pier 91 to convert subtidal habitat to shallow subtidal habitat. This action will convert approximately 0.12 acre of subtidal habitat to shallow subtidal habitat.

- Installation of riparian planting along an approximately 500-foot portion of shoreline in the northwest corner of the North Bay of Smith Cove (west of Pier 91)

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 Port of Seattle 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 #4431 and Corps Reference #200601091.

A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on March 21, 2007. 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 U.S. 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. Turbidity criteria contained in WAC 173-201A-200(1)(e)(i) shall apply to all in-water activities in the Duwamish East Waterway. Turbidity criteria contained in WAC 173-201A-210(1)(e)(i) shall apply to in-water activities in Elliott Bay, except as specifically modified by this Order for dredging.

B2. Construction activities may cause water quality effects that will exceed the state water quality criteria specified in Chapter 173-201A WAC. Per WAC 173-201A-410, Ecology may grant a temporary mixing zone on a short-term basis for the disturbance of in-place sediments during and immediately after essential activities. A temporary turbidity mixing zone of 300 feet from the edge of the in-water activities is allowed **only for dredging activity at Terminal 91, Pier 91** subject to the following:

a. Within the mixing zone, the "Excellent Quality" standard for turbidity is waived. All other applicable water quality standards shall remain in effect within the mixing zone and all other water quality standards are to be met outside of the authorized mixing zone.

b. This temporary mixing zone shall be in effect for the dredging operations at Terminal 91, Pier 91.

B3. In-Water Construction Water Quality Sampling and Monitoring: An in-water construction Water Quality Protection and Monitoring Plan shall be developed and implemented. A copy of the Water Quality Protection and Monitoring Plan shall be submitted to Ecology for review and approval, per Condition A2 within 30 days of issuance of this Order or no later than September 15, 2007. "In-water construction" is defined as all work below the ordinary high water mark (OHWM) of the Duwamish East Waterway or Elliott Bay. 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:

- Background samples shall be taken outside the area of influence of the inwater work. Background samples shall be collected for each compliance point. Background samples shall be collected at the same frequency as the point of compliance samples.

- Duwamish East Waterway - The point of compliance as specified in WAC 173-201A-200(1)(e)(i), which allows a 300-foot temporary mixing zone for turbidity resulting from disturbance of in-place sediments, and

- Elliott Bay (except the dredging activities) - 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.

- Elliot Bay Dredging - The point of compliance as specified in Condition B2 above, which allows a 300-foot temporary mixing zone for turbidity.

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 zones.

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: At the point of compliance, if exceedances of the standards below are detected through the 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.

- Duwamish East Waterway — Water quality standards for turbidity in "Salmonid Rearing/Migration Only" waters are as follows: turbidity shall not exceed 10 NTU over background conditions when the background is 50 NTU or less, or a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

- Elliott Bay — Water quality standards for turbidity in "Excellent Quality" 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.

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 #4431, 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. Work shall be accomplished per the following:

- Sheets 1-11, Proposed Terminal 30 Upgrade, dated September 15, 2006, revised June 5, 2007.
- Sheets 12-23, Proposed Terminal 91 Cruise Facility, dated September 15, 2006, revised June 5, 2007.
- Conservation measures described on pages 32-33 of the Biological Evaluation, prepared by Grette Associates LLC, dated December 2006, received by Ecology on March 5, 2007, except as modified by this Order.

C4. 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.

C5. 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.

C6. 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.

C7. Clean Fill Criteria: Applicant shall ensure that fill (clean structural material) placed for the proposed project does not contain toxic materials in toxic amounts.

C8. Risers shall be used at the drain locations to prevent asphalt and other material from entering waters of the state.

Work in Fresh and Marine Waters:

C9. During in-water construction (except dredging), 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. Oil absorbent materials shall be employed if any 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.

C10. The Applicant shall use tarps or other containment methods when cutting or drilling over water to prevent sawdust, asphalt rubble, and other materials from entering the water.

C11. During construction and dredging, 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 below the OHWM within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Metal debris, concrete blocks or pieces, asphalt, cables, submerged timbers and other debris in the construction work corridor shall be removed.

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. Project activities shall be conducted to minimize siltation of the beach area and bed.

C15. The Applicant shall operate the barge(s), tug, and dredge in deep water so as to prevent grounding. To the extent practicable, the Applicant shall minimize nearshore propeller wash impacts such as suspension of nearshore sediments.

Piling Removal Conditions:

C16. All piling shall be removed by vibratory extraction and a choker cable. In the event pilings break off during extraction, the remaining piling may be removed by using a chain, or hydraulically-operated or compressed-air saw, or other means to cut off the piling 2 feet below the mudline.

C17. 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.

C18. 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.

C19. The pilings shall be disposed of at an approved upland disposal site.

Pile Driving Conditions:

C20. All new pilings at Terminal 30 shall be concrete.

C21. All new pilings at Terminal 91 shall be steel.

C22. A block of wood at least twelve (12) inches thick shall be placed between the pile driver and the concrete piles to minimize in-water noise.

C23. The steel pilings shall be installed using a vibratory hammer to minimize in-water noise.

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. Conditions for Dredging Activities:

General Conditions:

D1. All dredging shall be completed with a mechanical clamshell dredge. Use of any other type of dredge will require prior approval from the Dredged Material Management Program (DMMP) agencies.

D2. Each pass of the dredge bucket shall be complete.

D3. Dredged material shall be placed into a split hull (bottom dump) barge for transport by tugboat. The barges shall have sidewalls in order to contain the material within the barge. Barges shall not be overfilled in order to prevent barge overflow.

D4. Dredged materials shall be disposed of within the defined boundaries of the Elliott Bay open-water disposal site.

D5. All debris (larger than 2 feet in any dimension) shall be removed from the dredged sediment prior to disposal. Similar sized debris found floating in the dredging or disposal area shall also be removed. This debris shall be disposed of upland such that it does not enter waters of the state.

D6. Dredging operations shall be conducted in a manner that minimizes the disturbance or siltation of adjacent waters and prevents the accidental discharge of petroleum products, chemicals, or other toxic or deleterious substances into waters of the state.

D7. The Applicant shall provide two (2) copies each of the "Dredging and Disposal Workplan" and the "Habitat Construction Workplan" to Ecology for review and approval. The workplans shall be submitted to Ecology per Condition A2 of this Order at least seven (7) days prior to the start of dredging. The workplans shall identify methods, procedures, and equipment that will be used and describe how water quality impacts will be minimized during dredging and in-water disposal activities. Notification information also shall be included in these workplans.

D8. The Applicant shall notify Ecology within seven (7) days of completing each stage of dredging at either Terminal 30 or Terminal 91.

Terminal 30 Conditions:

D9. Dredging shall be confined to the footprint illustrated in the Proposed Terminal 30 Upgrade, Sheet 10 of 23, dated 9/15/06, revised 6/5/07.

D10. The bottom profile shall be dredged to the contours illustrated in the Proposed Terminal 30 Upgrade, Sheet 11 of 23, dated 9/15/06, revised 6/5/07.

Terminal 91 Conditions:

D11. Dredging shall be confined to the West Berth Area footprint illustrated in the Proposed Terminal 91 Cruise Facility, Sheet 17 of 23, dated 9/15/06, revised 6/5/07. The Applicant shall notify Ecology and the other DMMP agencies to obtain additional approval if any work is proposed in Dredge Material Management Unit 3.

D12. The bottom profile shall be dredged to the contours illustrated in the Proposed Terminal 91 Cruise Facility, Sheet 18 of 23, dated 9/15/06, revised 6/5/07.

E. Stormwater Conditions for Upland Activities:

E1. The Applicant shall obtain and comply with the Construction Stormwater General Permits for this project.

E2. The Applicant shall obtain and comply with the Industrial Stormwater General Permits for this project.

F. Project Mitigation Conditions:

F1. Impacts to aquatic resources shall be mitigated by creating shallow intertidal habitat and planting a riparian area. Except as modified by this Order, mitigation measures are described in the following documents:

- Port of Seattle, "Riparian Planting Plan, Terminal 91 Cruise Ship Terminal," Sheet 23 of 23, dated 9/15/06, revised 6/5/07.
- Revised Mitigation Plan, Terminal 30 Container Terminal Reactivation and Cruise Terminal Relocation Project (Grette Associates, May 2007).

F2. In addition to conditions in the above-referenced documents, the following requirements shall be conditions of this Order:

a. Timing: Site preparation and installation of compensatory mitigation must begin at the first opportunity after construction affecting mitigation areas is complete, and in no case later than:

i. February 15, 2009, for the shallow intertidal habitat work.
ii. April 30, 2009, for the riparian planting.

Mitigation actions must be completed before the start of the seasonal closure period for in-water work. The closure period begins on February 16 and continues through July 31.

b. Field Supervision: Plant installation shall be field-supervised by a qualified consultant to ensure that plants are healthy, meet specifications, and are appropriately placed.

c. As-Built Report (Year 0): A report documenting the topographic contours and plants installed in the mitigation areas 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 show the bathymetry of the shallow subtidal habitat in relation to Mean Lower Low Water (MLLW)
iii. Drawings that clearly identify in plan view the location and square footage of the planted area.
iv. The installed planting scheme showing approximate locations of plants and the time of planting.
v. Photographs of planting areas taken from permanent reference points.
vi. Locations of photopoints, and sampling sites.
vii. A description of any changes to the mitigation plan that occurred during construction.

A copy of the as-built 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 installation of the mitigation measures, and in no case later than June 30, 2009.

d. Monitoring: The physical properties of the shallow subtidal habitat, including prop wash impacts from cruise ships, shall be documented in years 2, 5, and 10 after the Year 0 survey. The condition of riparian plantings shall be recorded in years 1, 2, 3, and 5 after the Year 0 report. 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 per Condition A2 above by July 31 of each year that they are due.

e. Performance Standards: The project shall meet the following performance standards as shown in Table 2 of the Revised Mitigation Plan:

- Existence of 0.06 acre of shallow intertidal habitat at the end of the 10-year monitoring period for physical properties.
- Survival of plantings after two years: 90%; survival after three years: 85%; and survival after four years and beyond: 80%.

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 for riparian plantings. 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.

F3. All habitat material (i.e., gravel) shall be washed prior to placement in waters of the state.

G. Emergency/Contingency Measures:

G1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.

G2. 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.

G3. 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.

G4. 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.

H. Timing Requirements:

H1. This Order is valid until all compliance requirements in this document have been met.

H2. 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.

I. Reporting and Notification Requirement Conditions:

I1. 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 #200601091, Order #4431 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

J. 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 July 2, 2007 at Bellevue, Washington.

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

ATTACHMENT A

PORT OF SEATTLE
TERMINAL 30 REDEVELOPMENT AND
TERMINAL 91 CRUISE TERMINAL RELOCATION PROJECT
Water Quality Certification Order #4431

Statement of Understanding of
Water Quality Certification Conditions

I have read and understand the conditions of Order #4431 Section 401 Water Quality Certification for the Port of Seattle Terminal 30 Redevelopment and Terminal 91 Cruise Terminal Relocation Project. I have also read and understand all permits, plans, documents, and approvals associated with the Port of Seattle Terminal 30 Redevelopment and Terminal 91 Cruise Terminal Relocation Project referenced in this order.

_____ _____
Signature Date

_____
Title

_____
Company