



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

June 21, 2007

**REGISTERED MAIL**  
**RB 670 438 758 US**

M.I. Property Development, LLC.  
Attn: Robert Taylor  
8233 West Mercer Way  
Mercer Island, Washington 98040

RE: Water Quality Certification Order #4433 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers (Corps) Reference #200601469 for Private Moorage, Float Plane Lift, Bank Stabilization, and Shoreline Enhancement, Lake Washington, City of Mercer Island, King County, Washington

Dear Mr. Taylor:

On May 11, 2007, the Washington State Department of Ecology (Ecology) received a Joint Aquatic Resources Permit Application (JARPA) from M.I. Property Development, LLC. (M.I. Property Development) requesting a Section 401 Water Quality Certification for the M.I. Property Development project on Lake Washington. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-mentioned project pursuant to the provisions in Chapter 173-225 WAC on May 9, 2007.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the original JARPA submitted on May 11, 2007 and in the JARPA Addendum submitted on May 24, 2007, and in the public notice (May 9, 2007) 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 May 11, 2007, Ecology received a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP) form for this project from your Agent (Ecco Design, Inc.). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with M.I. Property Development's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon M.I. Property Development's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.



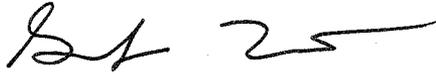
M. I. Property Development, LLC

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If you have any questions, please contact Cynthia Walcker, Federal Permit Coordinator at (425) 649-4318, or [cynt461@ecy.wa.gov](mailto:cynt461@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:csw:cja

Enclosure

cc: Susan Powell, U.S. Army Corps of Engineers  
Stewart Reinbold, Washington Department of Fish and Wildlife, Region 4  
Evan Wehr

e-cc:

Penny Keys – Ecology, HQ  
Loree' Randall – Ecology, HQ  
Erik Stockdale, Ecology, NWRO

**IN THE MATTER OF GRANTING A ) ORDER #4433**  
**WATER QUALITY ) Corps Reference No. 200601469**  
**CERTIFICATION TO ) Provide private moorage, bank stabilization, and**  
**M.I. Property Development, LLC. in ) shoreline enhancement at 8233 West Mercer**  
accordance with 33 U.S.C. 1341 ) Way, Lake Washington, Mercer Island, King  
(FWPCA § 401), RCW 90.48.120, RCW ) County, Washington  
90.48.260 and Chapter 173-201A WAC )

TO: M.I. Property Development, LLC.  
Attn: Robert Taylor  
8233 West Mercer Way  
Mercer Island, Washington 98040

On May 11, 2007 the Washington State Department of Ecology (Ecology) received a Joint Aquatic Resources Permit Application (JARPA) from M.I. Property Development, LLC. (M.I. Property Development) requesting a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-mentioned project pursuant to the provisions in Chapter 173-225 WAC on May 9, 2007.

The proposed project will replace an existing concrete and wood bulkhead with a new rock bulkhead. Also, the existing beach cove will be expanded in size and approximately 10-15 cubic yards of spawning gravel mix will be placed waterward of the bulkhead. Additionally, 17 wood piles will be removed from the nearshore area. The existing pier will be located further away from the shoreline, narrowed to 4 feet in width, and re-decked with Thru-Flow grated decking. Pile driving will facilitate installation of 11 wood piles for the new pier. An arched glu-lam bridge will be constructed to bridge the first 18 feet of the nearshore area. Relocation of an existing boat lift will occur as well as replacement of a second boat lift. Furthermore, a float plane lift containing four 20" x 20" foot pads will be craned into the water; the foot pads will rest on the lakebed substrate. Construction shall be performed from a barge; the contractor shall stockpile construction debris on the construction barge pending off-site disposal. Following construction, the project area will be revegetated with overhanging shoreline vegetation.

The project site is located in Lake Washington on the southwest corner of Mercer Island at 8233 West Mercer Way, Mercer Island, King County, Washington. The site lies in Section 36, Range 4 East, and Township 24 North. The site is located within the Cedar-Sammamish Water Resource Inventory Area (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 M.I. Property Development 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 Coordinator, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #4433 and Corps Reference #200601469.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on May 11, 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 Corps of Engineers 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. Per WAC 173-201A-200(1)(e)(i)(D), a temporary mixing zone is allowed immediately after necessary in-water construction activities. Under no circumstance shall this standard be exceeded outside of a radius of 150 feet from the activity causing turbidity:
- i. 5 NTU over background when the background turbidity is 50 NTU or less; or
  - ii. A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

- B2. Project activities shall be conducted to minimize siltation of the beach area and lakebed.

### **C. Monitoring**

- C1. During and immediately after project construction, the Applicant shall visually monitor turbidity discharges at the point of established compliance established in WAC 173-201A-210(1)(e)(i)(D). If water quality exceedances are observed outside of the point of compliance, work shall cease immediately and the Applicant shall assess the cause of the water quality problem and take appropriate measures to correct the problem and/or further prevent further water quality turbidity exceedances. The Applicant shall notify Ecology's Northwest Regional Office Federal Permit Coordinator at (425) 649-4318 of the exceedances.
- C2. If the results of the monitoring show that the water quality standards or project performance standards are not being met additional monitoring and mitigation may be required.

### **D. Conditions for Construction Activities**

- D1. Work in or near waters of the state shall be done so that it minimizes turbidity, erosion, and other water quality impacts.
- D2. Construction stormwater, sediment, and erosion control Best Management Practices (*e.g.*, a perimeter erosion control silt fence, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site. Silt fence shall be installed above the water line and shall remain in place until the completion of all construction activities at the site.
- D3. All construction debris and all manmade debris that has deposited on the beach within the construction work area shall be removed and properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- D4. 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.
- D5. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment shall be completed off-site. Wash water will be contained for proper disposal, and shall not be discharged into state waters or storm drains.

- D6. Fresh, uncured concrete in direct contact with water is toxic to aquatic life. All concrete shall be poured in the dry and shall be completely cured prior to coming into contact with state waters.
- D7. No wood, metal, or concrete preservatives, paints, sealers, glues, epoxies, chemicals or other substances harmful or toxic to fish shall be applied to the new pipes once they have been placed within the ordinary high water mark of Lake Washington.

**E. Vegetation Planting Plan**

- E1. Planting shall occur as described in the revised plan sheets, received by Ecology on May 30, 2007 (Sheet 4 of 11, *Pier and Planting Plan* and Sheet 9 of 11 *Planting Schedule*).

**F. Vegetation Maintenance and Monitoring Conditions**

- F1. All restoration plantings associated with this project will be watered twice per week through the end of October for the first two summers following planting in order to promote survival. Any plantings that do not survive through the second summer following planting will be replanted.
- F2. Performance standard: plantings shall achieve 90% or greater survival and invasive species (less than 15%) at Year 3 and Year 5.
- F3. Additional requirements of this Order:
- a. Timing: Planting at the M.I. Property Development project site will occur immediately after project completion or at the earliest planting season following project completion.
  - b. Baseline Monitoring Report: A baseline monitoring report documenting the final design of the planting area must be prepared when site construction and planting are completed. The report shall include the following:
    - i. Vicinity map showing site access.
    - ii. Drawings that clearly identify in plan view the location of the planted area.
    - iii. The installed planting scheme showing approximate locations of plants and the time of planting.
    - iv. Photographs of the area taken from permanent reference points.
    - v. Locations of photopoints, and sampling sites.
    - vi. A description of any changes to the restoration plan that occurred during construction.

A copy of the baseline monitoring report shall be sent to **Richard Robohm, Wetland Specialist at Ecology, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452**, within 60 days of completing construction, and in no case later than November 30, 2007.

- c. **Monitoring:** Monitoring of vegetation shall be done every year after the initial planting for a minimum of five (5) years, with monitoring reports submitted to Ecology annually. Monitoring shall include representative photos taken from permanent locations. The mortality of all planted woody species shall be recorded by documenting the survival of each individual planting. **All monitoring reports shall be submitted to Richard Robohm, Wetland Specialist, Washington State Department of Ecology, 3190 160th Avenue SE, Bellevue, WA 98008-5452.** Reports shall display the Order #4433 and Corps Reference #200601469.

#### **G. Timing Requirements**

- G1. This Order is valid until all compliance requirements in this document have been met.
- G2. 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. The Applicant shall notify Ecology's 401/CZM Federal Project Coordinator at (425) 649-4318 or (425) 649-7000, fax (425) 649-7098, or in writing, referencing Corps Reference #200601469, Order #4433.
  - H1a. at least seven (7) days in advance of the pre-construction meeting.
  - H1b. at least three (3) days prior to the start of construction at the project site.
  - H1c. within 14 days after completion of construction at the project site.

#### **I. Emergency/Contingency Measures**

- I1. The Applicant shall develop 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.
- I2. The facility shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- I3. 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.
- I4. 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 Coordinator at (425) 649-4318 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.

15. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.

#### **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.

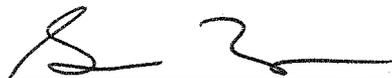
In addition, please send a copy of your appeal to:

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 June 21, 2007 at Bellevue, Washington.



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

**ATTACHMENT A**

**M.I. PROPERTY DEVELOPMENT, LLC.  
Water Quality Certification Order #4433**

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

I have read and understand the conditions of Order #4433, Section 401 Water Quality Certification for the M.I. Property Development project. I have also read and understand all permits, plans, documents, and approvals associated with the M.I. Property Development project referenced in this order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company