DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, PORTLAND DISTRICT
P.O. BOX 2946
PORTLAND, OREGON 97208-2946

Rec'd 4/25 emb

April 12, 2017

Regulatory Branch
Corps No.: NWP-2017-120

Mr. Jonathan Soll
Metro
600 NE Grand Avenue
Portland, Oregon 97232

Dear Mr. Soll:

This letter concerns your request for U.S. Army Corps of Engineers (Corps) authorization to conduct the Smith and Bybee Lakes Channel Restoration project, including channel dredging and placement of dredged materials within wetlands. The project is located in the Smith and Bybee Lakes Natural area in Portland, Multnomah County, Oregon. The project is assigned Corps application No.: NWP-2017-120.

We have reviewed our files and find no record of sediment testing for this site. During dredging, sediment is resuspended and buried sediments are exposed. Based on the location of your project, there is reason to believe material to be dredged in the proposed project area may contain contaminants harmful to aquatic organisms and public health. Therefore, the Corps must consider sediment quality in our evaluation of your project. As the permit applicant, it is your responsibility to provide the information necessary for this review.

The Corps presently uses the protocols outlined in the July 2016 Sediment Evaluation Framework for the Pacific Northwest (SEF) for sediment testing. The SEF guidance is used by the Portland, Seattle, and Walla Walla Districts to evaluate the suitability of dredged material for unconfined, aquatic placement, including wetlands, under the Clean Water Act or Marine Protection, Research, and Sanctuaries Act. The SEF is available on-line at http://www.nwp.usace.army.mil/Missions/Environment/DMM/.

The SEF process is managed by the Portland Sediment Evaluation Team (PSET) which is composed of representatives from the Corps, Environmental Protection Agency, Oregon Department of Environmental Quality, Washington Department of Ecology, U.S. Fish and Wildlife Service, and National Marine Fisheries Service. The PSET reviews the information provided by you and makes decisions regarding the risk there is site contamination, the suitability of the sediment sampling design, and finally, the suitability of the dredged material for unconfined, aquatic placement.

The SEF review process uses a tiered approach, and each SEF data submittal takes 30 days for the PSET to review and provide a response to the Regulatory Project Manager. These levels of review include the following:

- Level 1 Site History Information. This is an analysis of the proposed action (detailed project description), adjacent land uses, potential sources of contamination, and historic information.

- Level 2A Sampling and Analysis Plan (SAP). This plan outlines the "who, what, when, where, how, how much, and why," of the proposed sampling event. To streamline the PSET review process, this step can be combined with the Level 1 Site History Review if it is evident that sampling will be necessary. Additionally, the plans for conducting biological testing under Level 2B can also be included in this data submittal.

- Level 2A Sediment Characterization Report (SCR). This report describes the sampling event, any deviations from the PSET-approved SAP, and presents the laboratory data (in comparison to the appropriate benthic toxicity screening levels – either freshwater or marine). Level 2B reporting can be submitted simultaneously with the sediment quality data to streamline the PSET review process.

- Level 2B Special Evaluations/ Biological Testing. If the sediment quality data from the Level 2A SCR indicate the dredged material is not suitable for in-water placement without additional testing, the biological testing will need to be performed for the material to go in-water. Additionally, if sediment contamination is extremely high, then elutriate testing may be necessary to simulate conditions at the dredge site and disposal site.

The information contained within your application package is not sufficient to begin the **SEF Level 1 Site History review.** Please provide the following information and/or drawings as a complete package for the SEF (see SEF Chapter 3) review:

1. Prior and current land uses within the watershed that may have contributed contaminants to sediment in the project area and adjacent lands.
2. Outfall information, such as construction year, type, flow volume (capacity), and National Pollutant Discharge Elimination System (NPDES) data.
3. Industrial processes at or near the site and hazardous substances used/generated at these sites.
4. Atmospherically deposited pollutants within the airshed.
5. Specific information on environmental cleanups, brownfields, leaking underground storage tanks, etc.:
    a. For the State of Oregon: *www.oregon.gov/DEQ*. Specific site information can be found at *www.deq.state.or.us/lq/ECSI/ecsi*.
    b. For the State of Washington: *www.ecy.wa.gov/cleanup* or *www.ecy.wa.gov/programs/tcp/mtca_gen/hazsites*.

c. For the State of Idaho: *www.deq.idaho.gov.*

6. Comprehensive Environmental Response, Compensation, and Liability Act-listed site information. See *www.epa.gov/superfund/sites/npl/index.*

7. Spill events. These sites may provide information: *www.ecy.wa.gov/programs/spills/incidents/main*; *www.deq.state.or.us/lq/ECSI/ecsi*; *www.fws.gov/oregonfwo/Contaminants.*

8. Results of any previous sediment and biological testing presented in tables side-by-side with the most recent SEF SLs and bioassay interpretive criteria.
Any historical dredging activity and data/information from that activity.

Please overlay historical sediment sampling stations over your proposed project area. Please provide the laboratory data for past sampling within and near the proposed project.

Once we receive the requested information, it will be forwarded to the PSET for review.

Please note that each SEF data submittal must be reviewed by the PSET prior to proceeding to the next step. e.g., sediment chemistry data collected without a PSET-approved SAP may be insufficient for us to complete our review, and you may have to collect additional samples for laboratory analysis to determine the sediment quality.

For efficiency and to reduce processing times, the Corps requests all information related to the SEF review be submitted to the Regulatory Project Manager in the following formats: 1) hardcopy (one copy only) and 2) electronically on CD or DVD or by e-mail. SEF data submittals by e-mail must be under 10 MB.

If you have any questions regarding this application, please contact me at the letterhead address, by telephone at (503) 808-4385, or E-mail at: Melody.J.White@usace.army.mil.

Sincerely,

WHITE.MELODY.J.1292348157

Digitally signed by WHITE.MELODY.J.1292348157
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=USA, cn=WHITE.MELODY.J.1292348157
Date: 2017.04.12 15:11:18 -07'00'

Melody White
Team Leader, Regulatory Branch

Enclosure

Pacific Habitat Services, Inc., John van Stavern (JVS@pacifichabitat.com)
Port of Portland, Dana Green (Dana.Green@portofportland.com)

Table X. Conceptual Site Model (CSM) for Dredging and Disposal Activities.

SEDIMENT RELEASE FROM DREDGING AND UNCONFINED, AQUATIC PLACEMENT/DISPOSAL (if applicable)

Media of Concern (where chemicals of concern may be present)	Release[1] Mechanism (process that liberates or reveals chemicals of concern from media)	Secondary Media (other media impacted)	Primary Pathway (route from media to receptor)		Potential Receptors: Benthic Inverts.	Fish	ESA Species	Critical Habitat	Birds/Mammals	Humans
SEDIMENT →	Resuspension[2] (during dredging or aquatic disposal) →	Water column →	Direct Contact →							
	Generated Residuals[3] (redeposited from sloughing, dislodging, slope failure, or resettling during dredging or disposal) →	Settled sediment →	Direct Contact →							
			Dietary →	Tertiary Media, Tissue →						
	Undisturbed Residuals[4] (as uncovered during dredging- measured as the new surface material) →	Newly exposed sediment surface →	Direct Contact →							
			Dietary →	Tertiary Media, Tissue →						

Receptor Pathway Abbreviations: **C** = Pathway complete; **P** = Potentially complete pathway; **I** = Incomplete/insignificant pathway; NA = not applicable (e.g., NSM is bedrock or concrete)

[1] Release: the process by which the dredging operation results in the transfer of contaminants from sediment pore water and sediment particles into the water column or air (i.e., repartitioning). Contaminants in near-surface sediments (e.g., transport from redeposited sediment or residuals) may be released into the water column by densification, diffusion, and bioturbation (Bridges et. al., 2008).

[2] Resuspension: The process by which dredging and attended operations dislodge bedded sediment particles and disperse them into the water column. Resuspension rates range from <0.1% to over 5% (Bridges et. al., 2008).

[3] Redeposition: The process by which suspended particles resettle on the surface of the sediment after disturbance. Redeposition can occur in the near field (the plume area dominated by rapid settling velocities, changes in sediment total suspended concentration, and load with distance from the dredging operation) or the far field (the area where the total load in the plume is slowly varying and where advection, diffusion and settling are of the same order of magnitude).

[4] Residuals: Contaminated sediment found at the post-dredging surface of sediment profile, either within or adjacent to the dredging footprint (Bridges et. al., 2008). Examples include contaminated surface sediments uncovered by dredging, but not fully removed (e.g., newly exposed surface) or contaminated sediment dislodged from nearby slopes during dredging or slope failures. Although in-water disposal does not create undisturbed residuals, resuspended sediment particles settling at a site become part of the generated dredging residuals.

SEDIMENT RELEASE FROM OTHER TYPES OF DISPOSAL (not considered in the SEF)

	Disposal Method	Disposal Location	Transport Processes (Examples)
SEDIMENT →	Upland Disposal →	Upland Confined Aquatic Disposal (CDF)	The following upland processes are outside of the purview of SEF review: 1. Leaching 2. Surface runoff 3. Volatilization 4. Bioaccumulation Additional information on the evaluation of these disposal options can be found the following manuals: 1. Corps. 2003. Upland Testing Manual, ERD/EL TR-03-1. 2. EPA. 1998. Guidance for In Situ Subaqueous Capping of Contaminated Sediment, EPA 905-B96-004.
	Nearshore Disposal →	Nearshore CDF	
	Subaqueous Capping →	Engineered Cap	

Elaine Stewart

From: Ron Reimers [ron_rlrco@yahoo.com]
Sent: Friday, August 04, 2017 6:22 AM
To: 'Peter Gruendike'; 'Troy Brandt'; Elaine Stewart; melanie.klym@otak.com; marina@rlreimers.com
Subject: Fish Salvage update

Elaine,

Pete with River design was on site last night performing fish Salvage until just after 8 pm.
During the process no native fish were identified.

River design is contacting ODFW this am to discuss the salvage plan and the high water temperatures (Estimated above 85 degrees) that currently exist in the pool area. The current recommendation from River design is to cease rescuing the nonnative fish. R.L. Reimers had
Seven employees helping with salvage and removing dead nonnative fish from near the control structure.

I will be onsite until 730 this morning and returning around 930 hopefully we have direction from ODFW at that time as how they would like us to proceed. We are currently maintaining water levels from yesterday until directed otherwise.

Ron
541-979-7729

Oregon
Kate Brown, Governor

Department of Environmental Quality
Northwest Region Portland Office/Water Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5263
FAX (503) 229-6957
TTY 711

August 10, 2017

Jonathan Soll
METRO
600 NE Grand Avenue
Portland, OR 97232
Jonathan.Soll@oregonmetro.gov

RE: Nationwide 401 Water Quality Certification Approval for 2017-120, Smith and Bybee Lakes Channel Restoration

The US Army Corps of Engineers (USACE) has determined that your project will be authorized under Nationwide Permit (NWP) category #27. As described in the application package received and reviewed by the Oregon Department of Environmental Quality (DEQ), the project qualifies for the Nationwide Section 401 Water Quality Certification (WQC), subject to the conditions outlined below. If you cannot meet all conditions of this 401 WQC, you may apply for a standard individual certification. A standard individual certification will require additional information and higher fees will apply.

Certification Decision: Based on information provided by USACE and the Applicant, DEQ is reasonably assured that implementation-eligible activities under the proposed NWP will be consistent with applicable provisions of Sections 301, 302, 303, 306, and 307 of the federal Clean Water Act, state water-quality standards set forth in Oregon Administrative Rules Chapter 340 Division 41, and other appropriate requirements of state law, provided the following conditions are incorporated into the federal permit and strictly adhered to by the Applicant.

In addition to all USACE national and regional permit conditions, the following 401 WQC conditions apply to all NWP categories that qualify for the Nationwide 401 WQC.

401 GENERAL CERTIFICATION CONDITIONS

1) **Responsible parties:** This 401 WQC applies to the Applicant. The Applicant is responsible for the work of its contractors and sub-contractors, as well as any other entity that performs work related to this WQC.

2) **Work Authorized:** Work authorized by this 401 WQC is limited to the work described in the Application or Pre-Construction Notification submitted to the USACE and additional application materials (hereafter "the permit application materials"), unless otherwise authorized by DEQ. If the project is operated in a manner not consistent with the project description contained in the permit application materials, the Applicant is not in compliance with this 401 WQC and may be subject to enforcement.

3) A copy of this 401 WQC must be kept on the job site and readily available for reference by Applicant and its contractors, as well as by DEQ, USACE, National Marine Fisheries Service (NMFS), Oregon Department of Fish and Wildlife (ODFW), and other appropriate state and local government officials.

4) In accordance with OAR 340-048-0050, DEQ may modify or revoke this 401 WQC if project activities are having an adverse impact on state water quality or beneficial uses, or if the Applicant is otherwise in violation of the conditions of this certification.

5) The Applicant and its contractors must allow DEQ access to the project site, staging areas, and mitigation sites to monitor compliance with these 401 WQC conditions, including:
   a. Access to any records, logs, and reports that must be kept under the conditions of this 401 WQC;
   b. To inspect best management practices (BMPs), monitoring or operational equipment or methods; and
   c. To collect samples or monitor any discharge of pollutants.

6) Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

7) **Land Use Compatibility Statement:** In accordance with OAR 340-048-0020(2) (i), each Applicant must submit findings prepared by the local land use jurisdiction that demonstrates the activity's compliance with the local comprehensive plan. Such findings can be submitted using the appropriate section of the USACE & DSL Joint Permit Application, signed by the appropriate local official and indicating:

   a. "This project is consistent with the comprehensive plan and land use regulations;" or,

   b. "This project will be consistent with the comprehensive plan and land use regulations when the following local approvals are obtained," accompanied by the obtained local approvals.

   c. Rarely, such as for federal projects on federal land, "this project is not regulated by the comprehensive plan" will be acceptable.

In lieu of submitting the appropriate section of the USACE & DSL Joint Permit Application, the Applicant may use DEQ's Land Use Compatibility Statement form found at: http://www.deq.state.or.us/pubs/permithandbook/lucs.pdf

FOR PROJECTS THAT PROPOSE CONSTRUCTION, THE FOLLOWING GENERAL CONDITIONS APPLY

8) **Erosion and Sediment Control**: During construction, erosion and sediment control measures must be implemented to prevent or control movement of sediment, soil or pollutants into waters of the state. The applicant is required to develop and implement an effective erosion and sediment control plan. **Any project that disturbs more than one acre is required to obtain an NPDES 1200-C construction stormwater permit from DEQ.** In addition, the applicant (or responsible party) must:
   a. Where practicable, use removable pads or mats to prevent soil compaction at all construction access points through, and staging areas in, riparian or wetland areas to prevent soil compaction.

   b. Demarcate wetlands not specifically authorized to be impacted to protect from disturbance and/or erosion.

c. Place dredged or other excavated material on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands. Place BMPs as necessary to stabilize and prevent erosion.

9) **Spill Prevention:** Applicant must fuel, operate, maintain and store vehicles, and must store construction materials, in areas that will not impact water quality either directly or due to potential discharges.

10) **Spill & Incident Reporting:**
   a. In the event that petroleum products, chemicals, or any other deleterious materials are discharged into state waters, the discharge must be promptly reported to the Oregon Emergency Response Service (OERS, 1-800-452-0311). Containment and cleanup must begin immediately and be completed as soon as practicable.

   b. If the project operations result in distressed or dying fish, the operator must immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; and immediately notify DEQ and ODFW.

11) **Vegetation Protection and Site Restoration:**
   a. Applicant must protect riparian, wetland, and shoreline vegetation in the authorized project area from disturbance through one or more of the following:
      i. Minimization of project and impact footprint;
      ii. Designation of staging areas and access points in open, upland areas;
      iii. Fencing and other barriers demarking construction areas; and
      iv. Use of alternative equipment (e.g., spider hoe or crane).

   b. If authorized work results in any vegetative disturbance and the disturbance has not been accounted for in planned mitigation actions, the Applicant must successfully reestablish vegetation to a degree of function equivalent or better than before the disturbance.

12) The Applicant shall avoid and protect from harm, all wetlands and riparian areas located within 50 feet of USACE jurisdictional waters, unless proposed, neccesary, and approved as part of the project. If a local jurisdiction has a more stringent buffer requirement, that requirement will override this certification requirement.

FOR PROJECTS THAT PROPOSE IN-STREAM WORK IN JURISDICTIONAL WATERS

13) **Fish protection/Oregon Department of Fish and Wildlife timing:** The Applicant must perform in-water work only within the Oregon Department of Fish and Wildlife preferred time window as specified in the *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources*, or as authorized otherwise under a USACE permit and/or Department of State Lands removal/fill permit. Exceptions to the timing window must be recommended by Oregon Department of Fish and Wildlife, the National Marine Fisheries Services and/or the US Fish and Wildlife as appropriate.

14) **Aquatic life movements:** Any activity that may disrupt the movement of aquatic life living in the water body, including those species that normally migrate through the area, is prohibited. The Applicant must provide unobstructed fish passage at all times during any authorized activity, unless otherwise approved in the approved application.

15) **Turbidity**: The Applicant must implement appropriate Best Management Practices (BMPs) to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10% above natural stream turbidity is prohibited except as specifically provided below:

a. **Monitoring**: Turbidity monitoring must be conducted and recorded as described below. Monitoring must occur at two hour intervals each day during daylight hours when in-water work is being conducted. A properly calibrated turbidimeter is required **unless another monitoring method is proposed and authorized by DEQ**.

i. Representative Background Point: Applicant must take and record a turbidity measurement every two hours during in-water work at an undisturbed area. A background location shall be established at a representative location approximately 100 feet upcurrent of the in water activity unless otherwise authorized by DEQ. The background turbidity, location, date, tidal stage (if applicable) and time must be recorded immediately prior to monitoring downcurrent at the compliance point described below.

ii. Compliance Point: The Applicant must monitor every two hours. A compliance location shall be established at a representative location approximately 100 feet downcurrent from the disturbance at approximately mid-depth of the waterbody and within any visible plume. The turbidity, location, date, tidal stage (if applicable) and time must be recorded for each measurement.

b. **Compliance**: The Applicant must compare turbidity monitoring results from the compliance points to the representative background levels taken during each two – hour monitoring interval. Pursuant to OAR 340-041-0036, short term exceedances of the turbidity water quality standard are allowed as follows:

MONITORING WITH A TURBIDIMETER *EVERY 2 HOURS*	
TURBIDITY LEVEL	***Restrictions to Duration of Activity***
0 to 4 NTU above background	No Restrictions
5 to 29 NTU above background	Work may continue maximum of 4 hours. If turbidity remains 5-29 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-5 above background.
30 to 49 NTU above background	Work may continue maximum of 2 hours. If turbidity remains 30-49 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-5 above background.
50 NTU or more above background	Stop work immediately and inform DEQ

c. **Reporting**: The Applicant must record all turbidity monitoring required by subsections (a) and (b) above in daily logs. The daily logs must include calibration documentation; background NTUs; compliance point NTUs; comparison of the points in NTUs; location; date; time; and tidal stage (if applicable) for each reading. Additionally, a narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions. Applicant must make available copies of daily logs for turbidity monitoring to DEQ, USACE, NMFS, USFWS, and ODFW upon request.

d. **BMPs to Minimize In-stream Turbidity:** The Applicants must implement the following BMPs, unless otherwise accepted by DEQ:

i. Sequence/Phasing of Work – The Applicant must schedule work activities so as to minimize in-water disturbance and duration of in-water disturbances;
ii. Bucket control - All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket must be completed so as to minimize turbidity. All practicable techniques such as employing an experienced equipment operator, not dumping partial or full buckets of material back into the wetted stream, adjusting the volume, speed, or both of the load, or using a closed-lipped environmental bucket must be implemented;
iii. The Applicant must limit the number and location of stream-crossing events. Establish temporary crossing sites as necessary in the least sensitive areas and amend these crossing sites with clean gravel or other temporary methods as appropriate;
iv. Machinery may not be driven into the flowing channel, unless authorized by DEQ; and
v. Excavated material must be placed so that it is isolated from the water edge or wetlands, and not placed where it could re-enter waters of the state uncontrolled.

FOR PROJECTS THAT INCLUDE NEW IMPERVIOUS SURFACES OR REDEVELOPMENT OF EXISTING SURFACES, THE FOLLOWING CONDITIONS APPLY

16) **Post-Construction Stormwater Management:** For projects which propose new impervious surfaces or the redevelopment of existing surfaces, the Applicant must submit a post-construction stormwater management plan to DEQ for review and approval prior to construction, in order to ensure compliance with water quality standards. The Applicant must implement BMPs as proposed in the stormwater management plan, including operation and maintenance. If proposed stormwater facilities change due to site conditions, the Applicant must notify DEQ.

In lieu of a complete stormwater management plan, the applicant may submit documentation of acceptance of the stormwater into a DEQ permitted National Pollutant Discharge Elimination System (NPDES) Phase I Municipal Separate Storm Sewer System (MS4).

17) **Stormwater Management & System Maintenance:** The Applicant is required to implement effective operation and maintenance practices for the lifetime of the proposed facility.

CATEGORY-SPECIFIC CONDITIONS

In addition to all national and regional conditions of the USACE permit and the 401 Water Quality Certification general conditions above, the following conditions apply to the noted specific categories of authorized activities.

NWP 7 – Outfall Structures and Associated Intake Structures:

7.1) The following actions are denied certification:

a. Discharge outfalls that are not subject to an NPDES permit; and

b. Outfalls that discharge stormwater without pollutant removal demonstrated to meet water-quality standards prior to discharge to waters of the state.

7.2) If an Applicant cannot obtain an NPDES permit or submit an approvable stormwater management plan per DEQ's Guidelines found at: http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidelines.pdf, the Applicant must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

NWP 12 – Utility Lines:

12.1) For proposals that include directionally-bored stream or wetland crossings:

a. All drilling equipment, drill recovery and recycling pits, and any waste or spoil produced, must be completely isolated, recovered, then recycled or disposed of to prevent entry into waters of the state.

b. In the event that drilling fluids enter a water of the state, the equipment operator must stop work, immediately initiate containment measures and report the spill to the Oregon Emergency Response System (OERS) at 800-452-0311.

c. An adequate supply of materials needed to control erosion and to contain drilling fluids must be maintained at the project construction site and deployed as necessary.

d. The Applicant must have a contingency plan in place prior to construction for the inadvertent return of drilling lubricant.

12.2) For proposals that include utility lines through wetlands, include anti-seep collars or equivalent technology to prevent draining the wetlands.

NWP 13 – Bank Stabilization:

13.1) Projects that do not include bioengineering are denied certification, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means of protection.

13.2) To apply for certification for a project without bioengineering, the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

NWP 14 – Linear Transportation:

14.1) For projects that include bank stabilization, bioengineering must be a component of the project, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means to protect an existing structure.

14.2) To apply for certification for a project without bioengineering, the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

NWP 16 - Return Water from Contained Upland Disposal Areas: Water-quality criteria and guidance values for toxics, per OAR 340-041-0033, are available in Tables 20, 33A, 33B, and 33C at: http://www.deq.state.or.us/wq/standards/toxics.htm#Cur.

16.1) Discharge of return water from contaminated dredged material that exceeds a chronic or acute toxicity water quality standard is prohibited.

16.2) Water removed with contaminated dredged material that could or does exceed chronic water-quality criteria must be contained and disposed of at an appropriately sized and sealed upland facility by evaporation or infiltration.

16.3) If a Modified Elutriate Test (MET) is performed for the known contaminants of concern (CoCs) and CoC concentrations are below DEQ chronic water-quality criteria, return water discharge is not limited.

a. The MET must be performed before dredging.
b. DEQ must approve the list of CoCs and analytical method prior to the permittee performing the MET.
c. DEQ must review the results and provide approval of discharge from return water, in writing, prior to dredging.

NWP 20 – Response Operations for Oil and Hazardous Waste:

20.1) Coordination with DEQ's Emergency Response program is required. See: http://www.deq.state.or.us/lq/cu/emergency/index.htm.

NWP 22 – Removal of Vessels:

22.1) Coordination with DEQ's Emergency Response program is required. See: http://www.deq.state.or.us/lq/cu/emergency/index.htm.

NWP 31 – Maintenance of Existing Flood Control Facilities:

31.1) Projects in streams with temperature TMDLs which result in a net reduction of riparian shade are prohibited.

NWP 38 – Cleanup of Hazardous and Toxic Waste:

38.1) For removal of contaminated material from waters, dredging method is limited to diver assisted hydraulic suction, hydraulic suction, closed-lipped environmental bucket, or excavation in the dry, unless otherwise authorized by DEQ.

a. For in-water isolation measures, the permittee is referred to Appendix D of DEQ's Oregon Erosion and Sediment Control Manual, April 2005 (or most current version), at: http://www.deq.state.or.us/wq/stormwater/docs/escmanual/appxd.pdf.

38.2) Discharge to waters of the state resulting from dewatering during dredging or release of return water from an upland facility is prohibited except as provided below.

a. All water removed with sediment must be contained and disposed of at an appropriately sized and sealed upland facility by evaporation or infiltration; or,

b. A Modified Elutriate Test (MET) may be performed for the known Contaminants of Concern (CoCs) and if CoC concentrations are below DEQ chronic water-quality criteria; return water discharge is not limited.

   i. The MET must be performed before dredging.
   ii. DEQ must approve the list of CoCs and analytical method prior to the permittee performing the MET.
   iii. DEQ must review the results and provide approval of discharge from dewatering and return water in writing prior to dredging.

38.3) Dredged material must be disposed of in compliance with DEQ Rules governing Hazardous Waste (see: http://www.deq.state.or.us/lq/hw/hwmanagement.htm) or Solid Waste (see: http://www.deq.state.or.us/lq/sw/index.htm).

38.4) The new in-water surface must be managed to prevent exposure or mobilization of contaminants.

NWP 41 - Reshaping Existing Drainage Ditches:

41.1) To the extent practicable, permittees must work from only one bank in order to minimize disturbance to existing vegetation, preferably the bank with the least existing vegetation;

41.2) Following authorized work, permittee must establish in-stream and riparian vegetation on reshaped channels and side-channels using native plant species wherever practicable. Plantings must be targeted to address water-quality improvement (e.g., provide shade to water to reduce temperature or provide bank stability through root systems to limit sediment inputs). Planting options may include clustering or vegetating only one side of a channel, preferably the side which provides maximum shade.

NWP 42 – Recreational Facilities:

42.1) For facilities that include turf maintenance actions, the permittee must develop and implement an Integrated Pest Management Plan (IPM) that describes pest prevention, monitoring and control techniques with a focus on prevention of chemical and nutrient inputs to waters of the state, including maintenance of adequate buffers for pesticide application near salmonid streams, or coverage under an NPDES permit, if required (information is available at: http://www.deq.state.or.us/wq/wqpermit/pesticides.htm).

NWP 43 – Stormwater Management Facilities:

43.1) Projects that propose the following elements are denied certification:
   a. In-stream or wetland stormwater facilities;
   b. Discharge outfalls not subject to an NPDES permit; and,
   c. Proposals that do not demonstrate pollutant removal to meet water-quality standards prior to discharge to waters of the state.

43.2) To apply for certification for a project with in-stream stormwater facilities, without an NPDES permit, or without submittal of an approvable stormwater management plan per DEQ's Guidelines (at: http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidlines.pdf), the

permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

NWP 44 – Mining Activities:

44.1) Projects that do not obtain an NPDES 700-PM or Individual permit are denied certification.

44.2) To apply for certification for a project without an NPDES permit, the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

NWP 51 – Land-Based Renewable Energy Generation Facilities:

51.1) For associated utility lines with directionally-bored stream or wetland crossings proposed, condition 12.1 must be applied.

NWP 54 – Living Shorelines

B.1) Projects that do not include bioengineering are denied certification, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means of protection.

If the Applicant is dissatisfied with the conditions contained in this certification, a hearing may be requested. Such request must be made in writing to DEQ's Office of Compliance and Enforcement at 700 NE Multnomah St, Suite 600, Portland Oregon 97232, within 20 days of the mailing of this certification.

The DEQ hereby certifies that this project complies with the Clean Water Act and state rules, with the above conditions. If you have any questions, please contact Sara Christensen at 541-633-2007, by email at christensen.sara@deq.state.or.us, or at the address on this letterhead.

Sincerely,

Tiffany Yelton Braun for

Steve Mrazik,
Water Quality Manager
Northwest Region

ec: USACE: Melody White, Melody.J.White@usace.army.mil
DSL: Melinda Butterfield, Melinda.Butterfield@state.or.us
Pacific Habitat Services, Inc.: John van Staveren, JVS@pacifichabitat.com

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, PORTLAND DISTRICT
P.O. BOX 2946
PORTLAND, OREGON 97208-2946

August 18, 2017

Regulatory Branch
Corps No.: NWP-2017-120

Mr. Jonathan Soll
METRO
600 NE Grand Avenue
Portland, Oregon 97232
Jonathan.Soll@oregonmetro.gov

Dear Mr. Soll

The U.S. Army Corps of Engineers (Corps) received your request for Department of the Army authorization to conduct channel restoration activities at Smith and Bybee Lakes. The proposed project is located within the Smith and Bybee Lakes Natural Area in and unnamed channel connecting Smith and Bybee Lakes, Portland, Multnomah, Oregon. The site is in Section 31, Township 2 North, Range 1 East. (Lat: 45.613927 / Long: -122.732528). This letter verifies your project as depicted on the enclosed drawings (Enclosure 1) is authorized by Nationwide Permit (NWP) No.: 27, Aquatic Habitat Restoration, Establishment, and Enhancement Activities (*Federal Register, January 6, 2017, Vol. 82, No.: 4*).

The project will dredge approximately 7,100 cubic yards (cy) of sediment from the channel and 2 cy of woody debris that connects Smith and Bybee Lakes. The project also involves removing approximately 350 cubic yards of riprap and other fill material from a former road bed. The resulting channel will have a bottom width of 10 feet, with an average excavation depth varying from two to three feet. The 7,100 cy of sediment removed from the channel will be moved to an approximately 3.2 acre area south of the channel, and deposited in emergent wetlands to create a planting substrate for forested wetlands to be expanded. The 2 cy of woody debris will be side-cast into adjacent waters. The 350 cy of riprap and other material will be disposed of in an appropriate upland location. A temporary access path will impact 1.18 acres of wetlands along the slough. The path will allow equipment to access the project area from the St. Johns landfill.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed Nationwide Permit 27 Terms and Conditions (Enclosure 2); the Oregon Department of Environmental Quality (DEQ) 401 Water Quality Certification Conditions (Enclosure 3); and the following special conditions:

a. Upon starting the activities authorized in this permit/verification letter, Permittee shall notify the U.S. Army Corps of Engineers, Portland District, Regulatory Branch the

work has started. Notification shall be provided by e-mail to: cenwp.notify@usace.army.mil and the e-mail subject line shall include: Corps project number and the projects county location. NWP-2017-120, Multnomah County.

b. Permittee shall comply with the conditions specified in the Oregon Department of Environmental Quality Section 401 Water Quality Certification dated August 10, 2017 (Enclosure 3).

c. All in-water work shall be performed during the in-water work period(s) of June 15 to September 15, to minimize impacts to aquatic species. **Exceptions to this time period requires specific approval from the Corps and the National Marine Fisheries Service.**

d. If a sick, injured or dead specimen of a threatened or endangered species is found, the finder must notify NMFS' Office of Law Enforcement at 503-231-6240 or 206-526-6133. The finder must take care in handling of sick or injured specimens to ensure effective treatment, and in handling dead specimens to preserve biological material in the best possible condition for later analysis of cause of death. The finder also has the responsibility to carry out instructions provided by the Office of Law Enforcement to ensure that evidence intrinsic to the specimen is not disturbed unnecessarily.

e. Permittee shall fully implement all applicable Proposed Design Criteria (PDC) of the SLOPES V Restoration programmatic opinion. A detailed list of the PDC's are enclosed (Enclosure 4).

f. Permittee shall notify the Corps if the project changes in scope or is otherwise modified. The Corps is required to reinitiate consultation on this action where discretionary Federal involvement or control over the action has been retained or is authorized by law and (a) the amount or extent of taking specified in the Incidental Take Statement is exceeded, (b) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered, (c) the identified action is subsequently modified in a manner that has an effect to the listed species or critical habitat that was not considered in the biological opinion; or (d) a new species is listed or critical habitat designated that may be effected by the identified action (50 CFR 402.16).

g. If excavations encounter the sand and gravel aquifer, unexpected amounts of groundwater seepage, or other unexpected environmental conditions, Metro shall pause, construction, secure the site, and contact DEQ to determine the best appropriate

action. Work may continue once the situation is identified and appropriate measures are implemented.

h. Metro will follow the attached document for Best Management Practices during project construction and excavation activities (Enclosure 5).

i. Permittee shall implement the Inadvertent Discovery Plan (Enclosure 6) and immediately notify the U.S. Army Corps of Engineers, Portland District, Regulatory Branch if human remains or cultural resources are discovered during the performance of the authorized work. We also draw your attention to Regional Condition 3.

The requirements of the Endangered Species Act were met through a programmatic biological opinion as listed in the special condition above. The complete text of the biological opinion is available for your review at http://www.nwp.usace.army.mil/Missions/Environment/SLOPES.aspx. Please note, you must submit a SLOPES *Action Completion Report, Fish Salvage Report, and Site Restoration/Compensatory Mitigation Report* form which are provided in Enclosure 4. Please submit the SLOPES reports and any other reports associated with this permit to either the letterhead address above or by e-mail to cenwp.notify@usace.army.mil. For submittals by e-mail, the e-mail subject line shall include the Corps project number listed above and the name of the county where the project is located.

We have reviewed your project pursuant to the requirements of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic Preservation Act. We have determined the project complies with the requirements of these laws provided you comply with all of the permit general and special conditions.

The DEQ has issued a 401 Water Quality Certification for this project. No further coordination with DEQ is required provided the work is performed in accordance with all of the enclosed conditions.

Please note, Portland District NWP Regional General Condition 3, Cultural Resources and Human Burials Inadvertent Discovery Plan, details procedures should an inadvertent discovery occur. You must ensure that you comply with this condition during the construction of your project.

We have determined the aquatic resources identified on the enclosed Preliminary Jurisdictional Determination (PJD) form "may be" waters of the U.S. (Enclosure 7). The aquatic resources shown on the enclosed drawings are considered "potential jurisdictional waters" and the boundaries are approximate. These waters have been

treated as jurisdictional waters of the U.S. for purposes of computation of impacts and compensatory mitigation requirements. Please see the enclosed PJD form for additional information on the applicability of a PJD. If you concur with the PJD, please sign and return the PJD form to either the letterhead address above or the e-mail address below within 30 days of the date of this letter.

The enclosed PJD is advisory in nature and may not be appealed. However, you have the option to request an Approved Jurisdictional Determination (AJD). An AJD is an official determination regarding the presence or absence of waters of the U.S. and is an appealable action. The enclosed *Notification of Administrative Appeal Options and Process and Request for Appeal* form describes options regarding PJDs and AJDs (Enclosure 8). If an AJD is requested, please be aware that we may require the submittal of additional information to complete the AJD and work authorized in this letter may not occur until the AJD has been finalized.

The enclosed PJD finds there "may be" waters of the U.S. in the subject review area and the determination does not have an expiration date. However, the Corps may re-evaluate this determination at any time if new information warrants revisions.

The verification of this NWP is valid until March 18, 2022, unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work has not been completed by that date and you have commenced or are under contract to commence this activity before March 18, 2022, you will have until March 18, 2023, to complete the activity under the enclosed terms and conditions of this NWP. If the work cannot be completed by March 18, 2023, you will need to obtain a new NWP verification or authorization by another type of Department of the Army permit.

Our verification of this NWP is based on the project description and construction methods provided in your permit application. If you propose changes to the project, you must submit revised plans to this office and receive our approval of the revisions prior to performing the work. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. You must also obtain all local, State, and other Federal permits that apply to this project.

Upon completing the authorized work, you must fill out and return the enclosed *Compliance Certification* form (Enclosure 9). We would like to hear about your experience working with the Portland District, Regulatory Branch. Please complete a customer service survey form at the following address: http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

If you have any questions regarding this NWP verification, please contact Ms. Melody White at the letterhead address, by telephone at (503) 808-4385, or e-mail: Melody.J.White@usace.army.mil.

FOR THE COMMANDER, AARON L. DORF, COLONEL, CORPS OF ENGINEERS, DISTRICT COMMANDER:

JOHNSON.BRAD.ANTHONY.1470309284

Digitally signed by JOHNSON.BRAD.ANTHONY.1470309284
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=USA, cn=JOHNSON.BRAD.ANTHONY.1470309284
Date: 2017.08.18 15:24:52 -07'00'

Shawn H. Zinszer
Chief, Regulatory Branch

Enclosures

cc:

Oregon Department of State Lands (Butterfield, #60076)
Oregon Department of Environmental Quality (401applications@deq.state.or.us)
Port of Portland, Dana Green (Dana.Green@PortofPortland.com)
Pacific Habitat Services, Inc., John van Stavern (JVS@pacifichabitat.com)