

Chapter 5

Regulatory Coordination and Compliance

This chapter provides an update on the federal, state, and local laws and regulations that required the City to coordinate with regulatory agencies to obtain the necessary environmental permits. All necessary permits and approvals were received before construction began in November 2013, and they will be updated or modified as appropriate based on the changes described in Chapter 2. The major project permits and references are provided in Table 5-1.

A brief summary of tribal and public involvement is also included at the end of this chapter.

5.1 Federal Laws, Regulations, and Permits

Clean Water Act

As part of the project's planning process, the City has engaged in extensive coordination with USACE and Ecology to ensure compliance with the Clean Water Act.

Clean Water Act, Sections 401 and 404 (Public Law No. 92-500)

The in-water habitat improvements included as part of the Preferred Alternative fall under Sections 401 and 404 of the Clean Water Act. In addition, the construction activities adjacent to or within Elliott Bay are subject to Section 401.

Section 401 of the Clean Water Act requires that construction activities meet state water quality standards. Ecology issued the Section 401 Water Quality Certification (WQC) in April 2013 after review of the project materials. The project's Water Quality Monitoring and Protection Plan and Dewatering Plan, which are required components of the Section 401 WQC, were approved by Ecology in September 2013.

The final Section 404 permit was issued by USACE in October 2013.

Design and construction changes proposed as part of the Updated Preferred Alternative would require additional coordination with USACE and Ecology under Sections 401 and 404 of the Clean Water Act. The analysis included within this SEIS would allow the City and the regulatory agencies to evaluate the potential impacts of the Updated Preferred Alternative. Once the SEPA process is completed, the City

would coordinate with USACE and Ecology to obtain any necessary permit approvals prior to commencement of work outlined in this SEIS.

Clean Water Act, Section 402 (Public Law No. 92-500)

An NPDES construction stormwater general permit is required for the project because there is more than 1 acre of land-disturbing activity where construction stormwater could enter Elliott Bay. The construction stormwater NPDES permit was approved by Ecology in March 2013. An Administrative Order was appended to the permit in September 2013 and provides pollutant concentration thresholds for water that would be discharged after treatment.

The proposed construction changes would not require additional consultation with Ecology, or updates to the construction stormwater NPDES permit and the Administrative Order.

Rivers and Harbors Act

The Section 10 permit from USACE allows work in, over, and under the navigable waters of Elliott Bay, and it permits work that could affect the course, location, condition, or capacity of these waters. The project's Section 10 permit was issued in October 2013.

Design and construction changes proposed as part of the Updated Preferred Alternative would require additional coordination with USACE under the Rivers and Harbors Act; the City would coordinate with USACE to obtain any necessary permit approvals prior to commencement of work outlined in this SEIS.

Endangered Species Act

In accordance with Section 7 of the Endangered Species Act, USACE initiated formal consultation with NOAA Fisheries and USFWS in 2012. The project's Biological Assessment, which identifies and evaluates threatened and endangered species, and critical habitat that may be affected by the project, was evaluated by USACE, NOAA Fisheries, and USFWS during consultation. The final Biological Opinion was issued in September 2013.

Design and construction changes proposed as part of the Updated Preferred Alternative would require additional coordination with USACE, NOAA Fisheries, and USFWS under the Endangered Species Act; the City would coordinate with these agencies to obtain any necessary approval prior to commencement of work outlined in this SEIS.

Magnuson-Stevens Fishery Conservation and Management Act

Evaluation of the project's effect on essential fish habitat regulated under the Magnuson-Stevens Fishery Conservation and Management Act was conducted concurrently with the consultation with NOAA

Fisheries under Section 7 of the Endangered Species Act and concluded in September 2013 with publication of the Biological Opinion.

Design and construction changes proposed as part of the Updated Preferred Alternative would require additional coordination with USACE, NOAA Fisheries, and USFWS under the Magnuson-Stevens Fishery Conservation and Management Act; the City would coordinate with these agencies to obtain any necessary approval prior to commencement of work outlined in this SEIS.

Marine Mammal Protection Act

Construction of the Elliott Bay Seawall Project will generate sounds that may affect marine mammals. These sounds would be created by the project's pile-driving activities and were evaluated by the NOAA Fisheries Office of Protected Resources for the project. Approval for the "take" that may occur as a result of these activities was provided in the form of a Letter of Authorization in October 2013. A yearly update and reconfirmation of authorization will be submitted for each calendar year of construction.

Design and construction changes proposed as part of the Updated Preferred Alternative would require additional coordination with NOAA Fisheries under the Marine Mammal Protection Act; the City would coordinate with NOAA Fisheries to obtain any necessary approval prior to commencement of work outlined in this SEIS, and to coordinate with NOAA Fisheries on the yearly reconfirmation of authorization.

Bald and Golden Eagle Protection Act

There would be no potential "take," possession, or commerce of bald and golden eagles as part of this project.

Clean Air Act

Project effects related to air quality were considered relative to the requirements of the Washington State Clean Air Act. The project would not be a major source of air pollutants; therefore, no permit from the U.S. Environmental Protection Agency (EPA) was or will be required.

National Historic Preservation Act

Through Section 106 consultation with DAHP, tribes, the City, and other consulting parties, USACE determined that the project would adversely affect two historic properties located within the project area. To mitigate for the project's adverse effects, the City developed an MOA that outlines measures to avoid, minimize, and mitigate for adverse effects. In addition to the City and USACE, the MOA was signed by the State Historic Preservation Officer, the Advisory Council on Historic Preservation, tribes, and other consulting parties and was executed in October 2013.

The proposed design and construction changes would not require additional Section 106 consultation or updates to the MOA.

Native American Graves Protection and Repatriation Act

An Inadvertent Discovery Plan would be in place during project construction and would prescribe the appropriate coordination with the federal, state, and Tribal agencies should any graves or cultural artifacts be discovered. This plan would not change as a result of the Updated Preferred Alternative.

American Indian Religious Freedom Act

The American Indian Religious Freedom Act (42 United States Code 1996) requires federal agencies to protect and respect Native American religious practices and to allow tribal members access to culturally significant or sacred places. Culturally significant and sacred places have not been identified within the project area; however, consultation with affected tribes will continue throughout construction, and accommodations would be made if needed.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

If project construction requires the acquisition of real property or displacement of a business, the procedures of the Uniform Relocation Act would be followed.

5.2 State and Local Laws, Regulations, and Permits

State Environmental Policy Act

The Washington SEPA review process was completed in March 2013 after the project's Final EIS was issued. This SEIS provides updates to the Preferred Alternative and analyzes areas of potential new or likely significant adverse impacts. The updates evaluated as part of this SEIS will not be incorporated into project design or construction until the City and regulatory agencies have provided final approval.

Shoreline Management Act

The project is consistent with the three main elements of the Washington Shoreline Management Act, which are similar to those included as part of the Seattle Shoreline Management Program. These policy goals include preferred shoreline uses, environmental protection, and public access. A permit application was prepared to demonstrate this compliance and was submitted to the City's Department of Planning and Development (DPD) in October 2012.

In April 2013, DPD published its decision and submitted it to Ecology for review; however, the Seattle Historic Waterfront Association filed an appeal to the Shoreline Permit with the Washington Shorelines Hearings Board the following month. The appeal was withdrawn in July 2013, and the final permit was issued in July 2013.

Design and construction changes proposed as part of the Updated Preferred Alternative would require additional coordination with DPD under the Shoreline Management Act; the City would coordinate with DPD to obtain any necessary approval prior to commencement of work outlined in this SEIS.

Coastal Zone Management Act

Ecology has reviewed the project proposal under the CZMA to ensure that it complies with state environmental requirements and permits through the laws in the Coastal Zone Management Program. After review, the CZMA consistency determination was provided by Ecology in August 2013.

Design and construction changes proposed as part of the Updated Preferred Alternative would require additional coordination with Ecology under the CZMA; the City would coordinate with Ecology to obtain any necessary approval prior to commencement of work outlined in this SEIS.

Model Toxics Control Act

Several of the habitat improvements proposed as part of the project would occur within and adjacent to active Model Toxics Control Act (MTCA) sediment cleanup sites. Installation of these improvements would provide new uncontaminated surfaces and contain underlying contaminated sediments, substantially improving aquatic habitat conditions and reducing overall risk from contamination for nearshore aquatic species. The City would coordinate with Ecology prior to working in the immediate vicinity of these sites.

Washington Hydraulic Code

The Washington Hydraulic Code, implemented by the Washington Department of Fish and Wildlife (WDFW), applies to the project because construction will divert, obstruct, or change the flow or bed of Elliott Bay. The City's coordination with WDFW began in April 2012 and concluded with the issuance of the project's Hydraulic Project Approval in May 2013.

Design and construction changes proposed as part of the Updated Preferred Alternative would require additional coordination with WDFW under the Washington Hydraulic Code; the City would coordinate with WDFW to obtain any necessary approval prior to commencement of work outlined in this SEIS.

Aquatic Land Use Authorization

The Washington Department of Natural Resources (WDNR) acts as a land manager with the authority to lease or grant easements on aquatic land to tenants on behalf of the owners. The WDNR owns some of the aquatic land in Elliott Bay where construction will occur temporarily and where habitat improvements will be placed permanently.

An Aquatic Use Authorization was issued by WDNR in November 2013. This authorization provides the required permission for seawall construction and habitat placement to occur on land managed by WDNR.

The proposed design and construction changes would not require updates to the Aquatic Use Authorization.

King County Industrial Wastewater Discharge Permit or Authorization

Discharge of wastewater to the King County sewer system during project construction requires a discharge permit that outlines how the City will comply with appropriate discharge limits and pretreatment requirements. The City expects to obtain a discharge permit for construction dewatering (including decant water, contaminated non-process water, and contaminated stormwater and groundwater) in December 2013, prior to discharge to the King County sewer system.

The proposed construction changes would not require updates to the King County Industrial Wastewater Discharge permit.

City of Seattle Noise Ordinance

Relief from the requirements of the City of Seattle's Noise Ordinance is granted through a series of temporary noise variances from DPD. The temporary noise variances are required during project construction because some activities may exceed exterior sound-level limits. Although these limits may be exceeded intermittently throughout construction, the City would comply with the requirements of the variance to mitigate sound levels to the extent feasible.

The temporary noise variances are issued throughout construction, in response to upcoming activities; therefore, the proposed construction changes would be captured during continued coordination with DPD.

Local Historic Preservation Approval

Approval from the Seattle Department of Neighborhoods is required before project construction can change a designated landmark or structure or site located in a preservation district.

Certificates of Approval for work within the Pioneer Square Historic District were received after the Pioneer Square Preservation Board provided its recommendation for approval in June and August 2013.

Prior to working near and on the piers that are designated landmarks (Piers 54 to 59) and are located within the Waterfront Historic Character area, the City will seek approval from the Seattle Department of Neighborhoods under the Seattle Landmarks Preservation Ordinance (SMC 25.12), and the City will obtain a Certificate of Approval for the proposed activities.

The proposed design and construction changes would not require updates to the Certificates of Approval that have already been issued.

Table 5-1. Summary of Project Permits, Agreements, and Certifications

Permits, Agreements, and Certifications	Date Issued	Reference
Federal Laws, Regulations, and Permits		
Section 401 Water Quality Certification	April 1, 2013	Ecology (Washington State Department of Ecology). 2013. Water Quality Certification Order #9829 for U.S. Army Corps of Engineers Public Notice #NWS-2011-778-WRD, Elliott Bay Seawall Project, in Seattle, King County, WA. Issued April 1, 2013.
Section 401 Water Quality Protection and Monitoring Plan and Dewatering Plan	September 24, 2013	SDOT (Seattle Department of Transportation). 2013. Final Clean Water Act Section 401 Water Quality Monitoring and Protection Plan. Water Quality Certification Order #9829. Central Seawall. September 2013.
Clean Water Act (CWA) Section 404/10 Permits	October 29, 2013	USACE (U.S. Army Corps of Engineers). 2013. Department of the Army Permit for the Seattle Department of Transportation Elliott Bay Seawall Project. October 29, 2013.
CWA Section 402 National Pollution Discharge Elimination System Permit	May 2, 2013	Ecology. 2013. Coverage Under the Construction Stormwater General Permit. Elliott Bay Seawall Project, Permit No. WAR-126930. May 2, 2013.
CWA Section 402 National Pollution Discharge Elimination System Permit, Administrative Order	September 24, 2013	Ecology. 2013. Administrative Order. Elliott Bay Seawall Project, Seattle, WA 98101, Docket No. 10177. September 23, 2013.
Endangered Species Act – Biological Opinion	September 30, 2013	NOAA Fisheries and USFWS (National Oceanic and Atmospheric Administration Fisheries and U.S. Fish and Wildlife Service). 2013. Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the proposed Elliott Bay Seawall Project, City of Seattle, King County, WA. Fifth Field HUC 1711001904, Puget Sound/East Passage. (COE No. NWS-2011-778-WRD). September 25, 2013.
Marine Mammal Protection Act – Letter of Authorization	October 22, 2013	NOAA Fisheries. 2013. Letter of Authorization for the Elliott Bay Seawall Project. For Mark Mazzola, City of Seattle. October 21, 2013

Table 5-1. Summary of Project Permits, Agreements, and Certifications

Permits, Agreements, and Certifications	Date Issued	Reference
Section 106 – Memorandum of Agreement	October 18, 2013	SDOT. 2013. MOA Regarding Treatment of Adverse Effects Associated with the Elliott Bay Seawall Project, Seattle, King County, WA (DA Permit No. NWS-2011-778-WRD). October 18, 2013.
State and Local Laws, Regulations, and Permits		
State Environmental Policy Act – Environmental Impact Statement	March 14, 2013	SDOT. 2013. Elliott Bay Seawall Project State Environmental Policy Act Final Environmental Impact Statement. March 14, 2013.
Shoreline Substantial Development Permit	July 30, 2013	DPD (City of Seattle Department of Planning and Development). 2013. City of Seattle Land Use Permit for the Elliott Bay Seawall Project (No. 3013171). July 30, 2013.
CZMA Certification	August 13, 2013	Ecology. 2013. Coastal Zone Consistency for Corps Reference #NWS-2011-778-WRD U.S. Army Corps Public Notice for Individual Section 404 and 10 Permits, Elliott Bay Seawall Project, Elliott Bay, Seattle, King County, WA. August 8, 2013.
Hydraulic Project Approval	May 2, 2013	WDFW (Washington Department of Fish and Wildlife). 2013. Hydraulic Project Approval for the Elliott Bay Seawall Project. May 2, 2013.
Washington Department of Natural Resources Aquatic Lands Easement	November 27, 2013	WDNR (Washington State Department of Natural Resources). 2013. Aquatic Lands Easement for Enhancement and Restoration of State Owned Aquatic Lands No. 51-089146. November 27, 2013.
Washington Department of Natural Resources Rights of Entry	November 7, 2013	WDNR. 2013. Aquatic Lands Right of Entry No. 23-090259. November 7, 2013.
King County Industrial Wastewater Discharge Permit	<i>Expected December 2013</i>	N/A
Seattle Landmarks Certificate of Approval	<i>Expected December 2013</i>	N/A
Pioneer Square Historic District Certificate of Approval for Temporary Removal of Washington Street Boat Landing Pergola	June 13, 2013	Pioneer Square Preservation Board. 2013. Certificate of Approval for the Elliott Bay Seawall Project (PSB 154/13). June 13, 2013.
Pioneer Square Historic District Certificate of Approval for Street and Sidewalk Removal/ Restoration, Seawall Removal/ Replacement, and Street and Pedestrian Lighting	August 14, 2013	Pioneer Square Preservation Board. 2013. Certificate of Approval for the Elliott Bay Seawall Project (PSB 229/13). August 14, 2013.

5.3 Consistency with State and Local Plans

The Elliott Bay Seawall Project was evaluated for consistency with the various goals and policies enumerated within the applicable state and local plans. As described in Chapter 7 of the Final EIS, project construction and operation would support the overarching objectives outlined within the following plans. Additionally, the proposed design and construction changes would remain in compliance with the goals and policies provided in the plans listed below.

- WSDOT Ferries Division: Final Long Range Plan 2009-2030
- Seattle Capital Improvement Program
- Seattle Comprehensive Plan
- Downtown Urban Center Neighborhood Plan
- Pioneer Square Neighborhood Plan
- Commercial Core Neighborhood Plan
- Belltown Neighborhood Plan
- Seattle Central Waterfront Concept Design and Framework Plan
- Guiding Principles for Waterfront Seattle
- Seattle Stormwater Code
- Seattle Environmentally Critical Areas Code
- Seattle Parks and Recreation Development Plan
- Port of Seattle Shoreline Plan

5.4 Agency and Tribal Involvement

Throughout project design, the City consulted with federal, state, and local agencies and tribal staff. Consultation included meetings, information exchange, and collaboration in the development of habitat restoration measures. All permits were issued by the regulatory agencies before start of project construction, and an operations protocol for in-water construction has been signed by the City and affected tribes. These permits and agreements will ensure that impacts from project construction are minimized.

Continued consultation will occur throughout construction to ensure that commitments from the agency and tribal coordination and requirements of the project permits and agreements are upheld, and that all proposed changes are coordinated and approved by the applicable regulatory agencies and tribes.

Please see Section 7.4 of the Final EIS for additional information regarding agency and tribal involvement.

5.5 Public Involvement

The City conducted an intensive public outreach effort in preparation for the release of the EIS, including required legal ads and other official notifications, additional display ads (both in print and on the Internet), and postcard mailings to individuals and organizations on the project mailing list, including adjacent property owners. Project briefings were also made available to groups on request. Outreach efforts conducted since the March 2013 release of the Final EIS are summarized in Table 5-2.

Required legal ads, notifications, and media outreach, as well as updates to the project Web site, preceded the release of this SEIS. Adjacent property owners were also notified of the document and the proposed changes.

The City will continue to engage the public, including pier tenants and owners, surrounding neighborhoods, and waterfront residents during project construction by providing updates and forecasting upcoming work.

Table 5-2. Summary of Public Outreach Efforts since the Final EIS

Timeframe	Milestone/Stage	Significant Outreach Effort
Spring/Summer 2013	Preparatory fieldwork and final design	<ul style="list-style-type: none"> • Street Team outreach to communicate fieldwork activities • Central Waterfront Stakeholders Group meeting • Seattle City Council presentations • Ongoing briefings • Ongoing fairs/festivals/general outreach
Fall 2013	Final design and permit authorization	<ul style="list-style-type: none"> • Street Team distribution of preliminary construction information • Seattle City Council presentations • Ongoing briefings • Ongoing fairs/festivals/general outreach • Issuance of the Draft SEIS