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**From:** Cade, Deborah (ATG) [DeborahC@ATG.WA.GOV]  
**Sent:** Wednesday, February 11, 2009 10:34 AM  
**To:** Page, Heather (Consultant); Farley, Kimberly; Mattern, Dave (Consultant)  
**Cc:** Visconty, Sasha (Consultant)  
**Subject:** RE: please review by 2/20: Draft Central Waterfront Permit Summary  
**Attachments:** DraftCentralWaterfrontPermitSummary\_021109.doc

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**From:** Page, Heather (Consultant) [mailto:pageh@consultant.wsdot.wa.gov]  
**Sent:** Wednesday, February 11, 2009 8:24 AM  
**To:** Farley, Kimberly; Cade, Deborah (ATG); Mattern, Dave (Consultant)  
**Cc:** Visconty, Sasha (Consultant)  
**Subject:** please review by 2/20: Draft Central Waterfront Permit Summary

Hello all,

Could you please review the attached Draft Central Waterfront Permit Summary by Friday, Feb. 20?

The purpose of this memorandum is to briefly and succinctly identify the permits and associated appeals for local, state, and federal permits that would likely be required for the Bored Tunnel Hybrid Alternative.

Given the language in here for appeals, Sasha requested that we have legal eagles look at it as well.

Thanks for your help! Let me know if you have any questions.

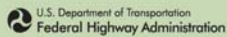
Heather

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Heather Page  
Permitting Manager  
Alaskan Way Viaduct and Seawall Replacement Program  
Phone: 206.267.6516  
Email: [pageh@consultant.wsdot.wa.gov](mailto:pageh@consultant.wsdot.wa.gov)

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## Alaskan Way Viaduct & Seawall Replacement Program



**To:** XXX  
**From:** XXX  
**Date:** February 11, 2009  
**Subject:** Permit Summary for the Bored Tunnel Hybrid Alternative

This memorandum identifies the permits and associated appeals for local, state, and federal permitting processes to deliver the following elements of the Bored Tunnel Hybrid Alternative:

- Construction of a new SR 99 four-lane bored tunnel from Royal Brougham Way in the south end to John, Thomas, and Harris Streets over Aurora Avenue in the north end
- Removal of the Alaskan Way Viaduct (Viaduct) from S. King Street to Elliott Avenue/Western Avenue
- Construction of a four-lane Alaskan Way South from S. King Street to Elliott Avenue/Western Avenue

### KEY ASSUMPTIONS

The following key assumptions have been made:

- The proposed Bored Tunnel Hybrid Alternative will occur in the City of Seattle, be federally funded, and follow a design-build model.
- Construction and permitting of the promenade, seawall, utility relocations, stormwater treatment facilities outside of the project limits, and intakes and outfalls will be performed by the City of Seattle.
- The Viaduct structure and the four-lane bored tunnel and its portals will be within WSDOT limited access. The Viaduct structure is located on City of Seattle right-of-way.
- All staging areas will be on public property.
- Within State right-of-way, WSDOT will comply with the intent of the local jurisdictions' regulations but will not obtain permits or undergo critical areas review for work being conducted in State right-of-way. This includes but is not limited to, clearing, grading, building, floodplain development, and demolition permits for WSDOT-owned structures (Viaduct).
- Landmark Building Approval will not be obtained for demolition of the Viaduct per previous discussions between Deborah Cade, Allison Hanson and Karen Gordon (City of Seattle).

**Comment [D1]:** WSDOT is required to get a floodplain permit. The state flood control program is created in state statute but is administered by local government similar to the shoreline program.

**PERMITTING SUMMARY**

The following tables show the major environmental and construction permits that WSDOT or the Design-Build Contractor would be required to obtain. An applicant or a third party can appeal the permit decision per the Administrative Procedures Act (Chapter 34.05 RCW). All administrative appeals must be exhausted before filing a judicial appeal.

An administrative appeal of a government agency decision is made to either the director of the agency or to a designated administrative board (such as the Shorelines Hearings Board or Pollution Control Hearings Board). Appeals to an agency director are typically heard by a hearing officer appointed by the director, who conducts an evidentiary hearing and compiles an administrative record. Judicial appeals to superior court may be used where there is no right of administrative appeal or where all avenues of administrative appeal have been exhausted. In either case, the court reviews the record compiled by the agency or the hearing officer, and typically does not hear new testimony or take additional evidence. (Deborah/Kimberly: I'm trying to put administrative v judicial appeals in layman terms and could use your help.)

**Deleted:** is in regards to the activities of administrative agencies of government and deals with the decision-making of administrative units of government (e.g., tribunals, boards or commissions)

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Additional permits to be obtained by the Design-Build Contractor may include Notice of Intents for geotechnical borings and for installing, modifying, or removing piezometers and wells. These do not have appeal periods associated with them.

It is assumed that a Section 402 NPDES (Individual) Permit and underground injection will not be required. SEPA adoption is required before the Washington State Department of Ecology (Ecology) can issue permits and before Shoreline Substantial Development Permits can be issued.

**Comment [D2]:** I've always questioned the necessity of adopting a document that WSDOT prepared – to me it's kind of like adopting a child that you have given birth to. I suggest that there be a notification published that can be called adoption, notice of action, or whatever that simply makes it clear that the NEPA EIS is the basis for the decision and that per RCW 43.21C.150, the SEPA requirement for an EIS does not apply.

**Table 1  
WSDOT Obtained Permits**

	SR 99 four-lane bored tunnel	Removal of the Alaskan Way Viaduct	Construction of a four-lane Alaskan Way South	Issuing Agency	Administrative Appeal <sup>1</sup>	Judicial Appeal <sup>2,3</sup>
Section 402 NPDES (General)	X	X	X	Ecology	<p><b>Total Time: 6 to 18 months</b></p> <ul style="list-style-type: none"> <li>• Appeal to Pollution Control Hearings Board (PCHB) by WSDOT or third party must be filed within 30 days of Ecology decision</li> <li>• Pre-hearing conference within 1 month of appeal</li> <li>• Current calendar shows openings in ~8 months for cases that are more than 2 days long</li> <li>• <a href="#">Appeal does not stay effectiveness of permit; appellant may ask issuing agency for stay, but would have to meet standard set out in RCW 43.21B.320, which includes likelihood of success on the merits, irreparable harm if permit not stayed, and that a stay is in the public interest.</a></li> </ul>	<p><b>Total Time: 6 months to 1+ years</b></p> <ul style="list-style-type: none"> <li>• Appeal of PCHB decision by WSDOT or third party must be filed in State Superior Court within 30 days from the date the order is mailed</li> <li>• Can be further appealed to Court of Appeals and other higher courts, 1+ year process</li> </ul>
CZMA Federal Consistency Determination	X	X	X	Ecology (Primary Regulator)/ Office of Ocean and Coastal Resource Management (Federal Oversight)	<p><b>Total Time: 6 months</b></p> <ul style="list-style-type: none"> <li>• Appeal of Ecology decision to Secretary of Commerce solely made by WSDOT, not by third party</li> <li>• Appeal to Secretary of Commerce must be filed within 30 days of Ecology decision</li> </ul>	<p><b>Total Time: 6 months to 1+ years</b></p> <ul style="list-style-type: none"> <li>• Secretary of Commerce's decision on appeal is final agency action and can be appealable in Federal Court under Administrative Procedures Act (APA)</li> </ul>

**Table 1  
WSDOT Obtained Permits**

	SR 99 four-lane bored tunnel	Removal of the Alaskan Way Viaduct	Construction of a four-lane Alaskan Way South	Issuing Agency	Administrative Appeal <sup>1</sup>	Judicial Appeal <sup>2,3</sup>
					<ul style="list-style-type: none"> <li>Public comment on Secretary of Commerce's decision</li> </ul>	
Shoreline Substantial Development Permit		X	X	City of Seattle (Primary Regulator)/ Ecology (State Oversight)	<p><b>Total Time: 6 months</b></p> <ul style="list-style-type: none"> <li>Appeal to Shoreline Hearing Board (SHB) by WSDOT or third party must be filed within 21 days of decision</li> <li>Board must make decision within 180 days of filing unless both parties agree to extend</li> <li><a href="#">Appeals stays permit; work may not proceed unless permit was granted by agency and there is a favorable Board ruling</a></li> </ul>	<p><b>Total Time: 6 months to 1+ years</b></p> <ul style="list-style-type: none"> <li>Appeal of SHB decision by WSDOT or third party must be filed in State Superior Court within 30 days from the date the order is mailed</li> <li>Can be further appealed to Court of Appeals and other higher courts, 1+ year process</li> <li><a href="#">Appeal beyond SHB does not stay permit unless petitioner is granted stay under RCW 90.58.140(5)(b), which requires appellant to show that there will be significant irreversible damage to environment.</a></li> </ul>
Street Use Permit	X	X	X	City of Seattle	<p><b>Total Time: 1 month</b></p> <ul style="list-style-type: none"> <li>Appeal to SDOT Director by WSDOT or third party must be filed within 10 days of permit decision</li> <li>The Director's decision on review or reconsideration is final</li> <li><a href="#">Not sure if a third party appeal stays the permit, but I do not believe that it</a></li> </ul>	<p><b>Total Time: 6 months to 1+ years</b></p> <ul style="list-style-type: none"> <li>The Director's decision can be appealable by WSDOT or third party in Federal Court under APA</li> <li><a href="#">Not clear to me what basis of this is. A city's decision would be appealable to superior court under LUPA. Federal APA only</a></li> </ul>

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**Table 1  
WSDOT Obtained Permits**

	SR 99 four-lane bored tunnel	Removal of the Alaskan Way Viaduct	Construction of a four-lane Alaskan Way South	Issuing Agency	Administrative Appeal <sup>1</sup>	Judicial Appeal <sup>2,3</sup>
					<a href="#">does.</a>	<a href="#">applies to federal agency decisions.</a>

Notes:

1. Section 402 NPDES General Permit (Chapter 173-226-190 WAC and Chapter 43.21B RCW); CZMA Federal Consistency Determination (Title 15, Ch IX, Part 930.125 Code of Federal Regulations); Shoreline Substantial Development Permit (Chapter 461-08 WAC and Chapter 90.58.180 RCW); Street Use Permit (Chapter 15.04.112 Seattle Municipal Code)
2. Section 402 NPDES General Permit (Chapter 371-08 WAC and Chapter 34.05 RCW); CZMA Federal Consistency Determination and Street Use Permit (Chapter 34.05 RCW); Shoreline Substantial Development Permit (Chapter 461-08-570 WAC and Chapter 34.05 RCW)
3. Optional Process for appeal directly to Court of Appeals: Section 402 NPDES General Permit (Chapter 371-08-560 WAC and Chapter 34.05.518 RCW) and Shoreline Substantial Development Permit (Chapter 461-08-575 WAC and Chapter 34.05.518 RCW)

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**Table 2  
Design-Build Contractor Obtained Permits**

	SR 99 four-lane bored tunnel	Removal of the Alaskan Way Viaduct	Construction of a four-lane Alaskan Way South	Issuing Agency	Administrative Appeal <sup>1</sup>	Judicial Appeal <sup>2</sup>
Noise Variance	X	X	X	City of Seattle	<p><b>Total Time: 4 to 6 months</b></p> <ul style="list-style-type: none"> <li>• Appeal to Hearing Examiner by WSDOT or third party must be filed within 10 days of decision</li> <li>• May take 6 to 7 weeks to schedule hearing, decision must be issued within 15 days of hearing</li> </ul>	<p><b>Total Time: 6 months to 1+ years</b></p> <ul style="list-style-type: none"> <li>• Appeal of Hearing Examiner decision by WSDOT or third party must be filed in State Superior Court within 21 days</li> <li>• Can be further appealed to Court of Appeals and other higher courts, 1+ year process</li> </ul>
Historic District Approvals	X	X	X	City of Seattle (Primary Regulator)/ Related Federal Oversight through DAHP	<p><b>Total Time: 6 months</b></p> <ul style="list-style-type: none"> <li>• Appeal to Hearing Examiner by WSDOT or third party must be filed within 14 days of decision</li> <li>• Decision must be issued within 90 days of filing of all city appeals</li> <li>• <a href="#">I'm assuming that this is listed as a required approval for impacts of the projects to non-highway structures. However, let's think about this one – if the structure is being impacted by WSDOT, presumably demolished for construction, WSDOT owns it and the City cannot tell WSDOT to build the highway somewhere else so as to avoid the impact to the historic property.</a></li> </ul>	<p><b>Total Time: 6 months to 1+ years</b></p> <ul style="list-style-type: none"> <li>• Appeal of Hearing Examiner decision by WSDOT or third party must be filed in State Superior Court within 21 days</li> <li>• Can be further appealed to Court of Appeals and other higher courts, 1+ year process</li> </ul>
Industrial Wastewater Discharge Authorization (Dewatering)	X			King County (Primary Regulator)/	<p><b>Total Time: 6 months</b></p> <ul style="list-style-type: none"> <li>• Appeal to Hearing Examiner by WSDOT or third party must</li> </ul>	<p><b>Total Time: 6 months to 1+ years</b></p> <ul style="list-style-type: none"> <li>• Appeal of Hearing Examiner</li> </ul>

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**Table 2  
Design-Build Contractor Obtained Permits**

	SR 99 four-lane bored tunnel	Removal of the Alaskan Way Viaduct	Construction of a four-lane Alaskan Way South	Issuing Agency	Administrative Appeal <sup>1</sup>	Judicial Appeal <sup>2</sup>
				Ecology (State Oversight)	be filed within 15 days of the Director's decision <ul style="list-style-type: none"> <li>Decision must be issued within 90 days from the appeal date</li> </ul>	by WSDOT or third party must be filed in PCHB or State Superior Court within 30 days from the date the order is mailed <ul style="list-style-type: none"> <li>Can be further appealed to Court of Appeals and other higher courts, 1+ year process</li> </ul>

Notes:

- Noise Variance ("Proposed" Chapter 25.08 and Chapter 3.05 Seattle Municipal Code); Historic District Approvals (Chapter 25.24.080 and Chapter 25.25.300 Seattle Municipal Code); King County Industrial Discharge Authorization (Chapter 20.24 and 28.84.100 King County Code)
- Judicial Review of Land Use Decisions: Chapter 36.70C RCW; Industrial Wastewater Discharge Authorization (Dewatering): PCHB (Chapter 173-226-190 WAC and Chapter 43.21B RCW) Superior Court (Chapter 371-08 WAC and Chapter 34.05 RCW)

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