

Ordinance No. 124198

Council Bill No. 117782

AN ORDINANCE granting King County Department of Natural Resources and Parks, Wastewater Treatment Division permission to construct, maintain, and operate a combined sewer overflow control system within Triton Drive Northwest as part of the existing North Beach Pump Station for an unlimited term; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

Related Legislation File: \_\_\_\_\_

|   |  |
|---|--|
| Date Introduced and Referred:<br><u>5.13.13</u>             | To: (committee):<br><u>Transportation</u>      |
| Date Re-referred:   | To: (committee):                               |
| Date Re-referred:   | To: (committee):                               |
| Date of Final Action:<br><u>6/10/13</u>                     | Date Presented to Mayor:<br><u>6/11/13</u>     |
| Date Signed by Mayor:<br><u>6/20/13</u>                     | Date Returned to City Clerk:<br><u>6/20/13</u> |
| Published by Title Only <input checked="" type="checkbox"/> | Date Vetoed by Mayor:                          |
| Published in Full Text _____                                |  |
| Date Veto Published:  | Date Passed Over Veto:                         |
| Date Veto Sustained:  | Date Returned Without Signature:               |

# The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: *Don Richmond*

## Committee Action:

| Date           | Recommendation | Vote                  |
|----------------|----------------|-----------------------|
| <u>5-31-13</u> | <u>PASS</u>    | <u>TRB+JG<br/>3-0</u> |

This file is complete and ready for presentation to Full Council. \_\_\_\_\_

## Full Council Action:

| Date           | Decision      | Vote       |
|----------------|---------------|------------|
| <u>6/10/13</u> | <u>Passed</u> | <u>9-0</u> |

*Law Department*

**CITY OF SEATTLE**  
**ORDINANCE** 124198  
**COUNCIL BILL** 117782

1  
2  
3  
4 AN ORDINANCE granting King County Department of Natural Resources and Parks,  
5 Wastewater Treatment Division permission to construct, maintain, and operate a  
6 combined sewer overflow control system within Triton Drive Northwest as part of the  
7 existing North Beach Pump Station for an unlimited term; specifying the conditions  
8 under which this permit is granted; and providing for the acceptance of the permit and  
9 conditions.

10 WHEREAS, King County Department of Natural Resources and Parks, Wastewater Treatment  
11 Division ("KCWTD") has applied for permission to construct a below-grade combined  
12 sewer overflow ("CSO") control facility that includes a storage tank, flushing vault, and  
13 drain vault (the "North Beach CSO" or "project"). The purpose of the project is to reduce  
14 and control stormwater flows to the combined sewer system and the frequency of CSO  
15 events at KCWTD's North Beach Basin outfalls to Puget Sound; and

16 WHEREAS, KCWTD has determined that installing and implementing the North Beach CSO is  
17 KCWTD's preferred option for complying with KCWTD's National Pollution Discharge  
18 Elimination System Waste Discharge Permit No. WA-002918-1 for the West Point  
19 Wastewater Treatment Plant that requires KCWTD to limit CSO events to Puget Sound  
20 at the North Beach Pump Station to no more than one overflow per year; and

21 WHEREAS, by Resolution 31421, the City granted conceptual approval of the construction of  
22 the North Beach CSO project; and

23 WHEREAS, the City Council approved, with conditions, the Council Land Use Action for the  
24 expansion under Clerk's File 312299 on March 18, 2013 that included approval of a  
25 Shoreline Substantial Development Permit for features of the expanded facility that are  
26 within the City's Shoreline District; and

27 WHEREAS, the adoption of this ordinance is the culmination of the approval process for the  
28 North Beach CSO, NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. **Permission.** Subject to the terms and conditions of this ordinance, the City of  
Seattle ("City") grants permission (also referred to in this ordinance as a permit) to the King  
County Department of Natural Resources and Parks, Wastewater Treatment Division, and its



1 successors and assigns as approved by the Director of the Seattle Department of Transportation  
2 (“Director”) according to Section 14 of this ordinance (the party named above and each approved  
3 successor and assign is referred to as “Permittee”); to construct, maintain, and operate a below-  
4 grade combined sewer overflow (“CSO”) control facility that includes a storage tank, flushing  
5 vault, and drain vault (the “North Beach CSO” or “project”). The North Beach CSO is located in  
6 Triton Drive Northwest, at the intersection of Northwest 100<sup>th</sup> Street and Northwest Blue Ridge  
7 Drive, adjacent in whole or in part to King County’s North Beach pump station, parcel no.  
8 613260-0005, the property legally described as:  
9

10 Lot 1, Block 1, of North Beach Addition, King County, Washington.

11 The purpose of the project is to reduce and control stormwater flows to the combined  
12 sewer system and the frequency of CSO events at KCWTD’s North Beach Basin outfalls to  
13 Puget Sound.  
14

15 Section 2. **Term.** The permission granted to the Permittee to construct, maintain, and  
16 operate the North Beach CSO under this ordinance shall continue for so long as the North Beach  
17 CSO is used to reduce the frequency of combined sewer overflows to Puget Sound at the North  
18 Beach pump station facility. This permission is subject to the right of the City to require the  
19 removal of the North Beach CSO for city transportation purposes or to revise by ordinance any  
20 of the terms and conditions of the permission granted by this ordinance. During the lifetime of  
21 the North Beach CSO, the Director may further assess the effectiveness of the North Beach CSO  
22 and determine if additional amendments to this ordinance are desired or necessary.  
23

24 Section 3. **Protection of utilities.** The permission granted is subject to the Permittee  
25 bearing the expense of any protection, support, or relocation of existing utilities deemed  
26 necessary by the owners of the utilities; and the Permittee being responsible for any damage to  
27  
28



1 the utilities due to the construction, repair, reconstruction, maintenance, operation, or removal of  
2 the North Beach CSO and for any consequential damages that may result from any damage to  
3 utilities or interruption in service caused by any of the foregoing.

4       Section 4. **Removal for transportation purposes.** The permission granted is subject to  
5 use of the street right-of-way or other public place (collectively “public place”) by the City and  
6 the public for transportation purposes. The City expressly reserves the right to deny or terminate  
7 the permission at any time and require the Permittee to remove the North Beach CSO, or any part  
8 thereof or installation on the public place, at the Permittee’s sole cost and expense in the event  
9 that:  
10

11               (a) the City Council determines by ordinance that the space occupied by the  
12 North Beach CSO is necessary for any city transportation purpose or that the North Beach CSO  
13 interferes with any city transportation purpose; or  
14

15               (b) the Director determines that use of the North Beach CSO has been  
16 abandoned; or  
17

18               (c) the Director determines that any term or condition of this ordinance has  
19 been violated, and the violation has not been corrected by the Permittee by the compliance date  
20 after a written request by the City to correct the violation (unless a notice to correct is not  
21 required due to an immediate threat to the health or safety of the public).

22       A City Council determination by ordinance that the space is needed for, or the North  
23 Beach CSO interferes, with a city transportation purpose is conclusive and final.

24       Section 5. **Permittee’s obligation to remove and restore.** If the City terminates the  
25 permission granted, then within a reasonable time stated in the ordinance or order requiring  
26 removal of the North Beach CSO, the Permittee shall, at its own expense, remove the North  
27



1 Beach CSO and all of the Permittee's equipment and property from the public place. The  
2 Permittee shall replace and restore all portions of the public place that may have been disturbed  
3 for any part of the North Beach CSO in as good condition for public use as existed prior to  
4 construction of the North Beach CSO and in at least as good condition in all respects as the  
5 abutting portions of the public place as required by SDOT right-of-way restoration standards.

6 Failure to remove the North Beach CSO as required by this section is a violation of  
7 Chapter 15.90 of the Seattle Municipal Code ("SMC") or successor provision; however,  
8 applicability of Chapter 15.90 does not eliminate any remedies available to the City under this  
9 ordinance or any other authority. If the Permittee does not timely fulfill its obligations under this  
10 section, the City may in its sole discretion remove the North Beach CSO and restore the public  
11 place at the Permittee's expense, and collect such expense in any manner provided by law.

12 Upon the Permittee's completion of removal and restoration in accordance with this  
13 section, or upon the City's completion of the removal and restoration and the Permittee's  
14 payment to the City for the City's removal and restoration costs, the Director shall then issue a  
15 certification that the Permittee has fulfilled its removal and restoration obligations under this  
16 ordinance. Upon prior notice to the Permittee and entry of written findings that it is in the public  
17 interest, the Director may, in the Director's sole discretion, conditionally or absolutely excuse the  
18 Permittee from compliance with all or any of the Permittee's obligations under this section.

19 Section 6. **Repair or reconstruction.** The North Beach CSO shall remain the exclusive  
20 responsibility of the Permittee. The Permittee shall maintain the North Beach CSO in good and  
21 safe condition for the protection of the public. The Permittee shall obtain all required City  
22 permits and approvals to construct, reconstruct, repair, or maintain the North Beach CSO.

23 Construction of the North Beach CSO shall conform to the plans and specifications approved by  
24



1 the Director. The Director may, in the Director's judgment, order the North Beach CSO  
2 reconstructed or repaired at the Permittee's cost and expense because of: the deterioration or  
3 unsafe condition of the North Beach CSO; the installation, construction, reconstruction,  
4 maintenance, operation, or repair of any municipally-owned public utilities; or for any other  
5 cause that gives rise to public health or safety concerns.

6  
7 **Section 7. Failure to correct unsafe condition.** After written notice to the Permittee and  
8 failure of the Permittee to correct an unsafe condition within the time stated in the notice, the  
9 Director may order the North Beach CSO be closed or removed at the Permittee's expense if the  
10 Director deems that the North Beach CSO has become unsafe or creates a risk of injury to the  
11 public. If there is an immediate threat to the health or safety of the public, a notice to correct is  
12 not required.

13  
14 **Section 8. Continuing obligations.** Notwithstanding termination of the permission  
15 granted, or closure or removal of the North Beach CSO, the Permittee shall remain bound by all  
16 of its obligations under this ordinance until the Director has issued a certification that the  
17 Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance.  
18 Notwithstanding the issuance of that certification, the Permittee shall continue to be bound by  
19 the obligations in Section 9 of this ordinance and shall remain liable for any unpaid fees assessed  
20 under Section 17 of this ordinance.

21  
22 **Section 9. Release, hold harmless, indemnification, and duty to defend.** The  
23 Permittee, by accepting the terms of this ordinance, releases the City, its officials, officers,  
24 employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense,  
25 attorneys' fees, or damages of every kind and description arising out of or by reason of the North  
26



1 Beach CSO or this ordinance, including but not limited to claims resulting from injury, damage,  
2 or loss to the Permittee or the Permittee's property.

3 The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its  
4 officials, officers, employees, and agents from and against all claims, actions, suits, liability,  
5 loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only  
6 damages that may result from the sole negligence of the City, that may accrue to, be asserted by,  
7 or be suffered by any person or property including, without limitation, damage, death, or injury  
8 to members of the public or to the Permittee's officers, agents, employees, contractors, invitees,  
9 tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:  
10

11 (a) the existence, condition, construction, reconstruction, modification,  
12 maintenance, operation, use, or removal of the North Beach CSO or any portion thereof, or the  
13 use, occupation, or restoration of the public place or any portion thereof by the Permittee or any  
14 other person or entity;  
15

16 (b) anything that has been done or may at any time be done by the Permittee by  
17 reason of this ordinance; or  
18

19 (c) the Permittee failing or refusing to strictly comply with every provision of this  
20 ordinance; or arising out of or by reason of the North Beach CSO or this ordinance in any other  
21 way.

22 If any suit, action, or claim of the nature described above is filed, instituted, or begun  
23 against the City, the Permittee shall upon notice from the City defend the City, with counsel  
24 acceptable to the City, at the sole cost and expense of the Permittee, and if a judgment is  
25 rendered against the City in any suit or action, the Permittee shall fully satisfy the judgment  
26 within 90 days after the action or suit has been finally determined, if determined adversely to the  
27



1 City. If it is determined by a court of competent jurisdiction that Revised Code of Washington  
2 (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or  
3 result from the concurrent negligence of the City, its agents, contractors, or employees, and the  
4 Permittee, its agents, contractors, or employees, this indemnity provision shall be valid and  
5 enforceable only to the extent of the negligence of the Permittee or the Permittee's agents,  
6 contractors, or employees.

7  
8 Section 10. **Insurance.** For as long as the Permittee exercises any permission granted by  
9 this ordinance and until the Director has issued a certification that the Permittee has fulfilled its  
10 removal and restoration obligations under Section 5 of this ordinance, the Permittee shall obtain  
11 and maintain in full force and effect, at its own expense, insurance that protects the City from  
12 claims and risks of loss from perils that can be insured against under commercial general liability  
13 (CGL) insurance policies in conjunction with:  
14

15 (a) construction, reconstruction, modification, operation, maintenance, use,  
16 existence, or removal of the North Beach CSO or any portion thereof, as well as restoration of  
17 any disturbed areas of the public place in connection with removal of the North Beach CSO;

18 (b) the Permittee's activity upon or the use or occupation of the public place  
19 described in Section 1 of this ordinance; and  
20

21 (c) claims and risks in connection with activities performed by the Permittee  
22 by virtue of the permission granted by this ordinance.

23 Minimum insurance requirements are CGL insurance based on the Insurance Services  
24 Office (ISO) form CG 00 01 or equivalent. The City requires insurance coverage to be placed  
25 with an insurer admitted and licensed to conduct business in Washington State or with a surplus  
26 lines carrier pursuant to RCW Chapter 48.15. If coverage is placed with any other insurer or is  
27



1 partially or wholly self-insured, such insurer(s) or self-insurance is subject to approval by the  
2 City's Risk Manager.

3 Minimum limits of liability shall be \$2,000,000 each occurrence combined single limit  
4 bodily injury and property damage, with \$4,000,000 annual aggregate. Coverage shall name the  
5 "City of Seattle, its elected and appointed officers, officials, employees and agents" as additional  
6 insureds for primary and non-contributory limits of liability subject to a Separation of Insureds  
7 clause.  
8

9 Within 60 days after the effective date of this ordinance, the Permittee shall provide to  
10 the City, or cause to be provided, certification of insurance coverage including an actual copy of  
11 the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement  
12 or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to  
13 the Department of Transportation ("SDOT") at an address as the Director may specify in writing  
14 from time to time. The Permittee shall provide a certified complete copy of the insurance policy  
15 to the City promptly upon request.  
16

17 If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager  
18 may be submitted in lieu of the insurance coverage certification required by this ordinance, if  
19 approved in writing by the City's Risk Manager. The letter of certification must provide all  
20 information required by the City's Risk Manager and document, to the satisfaction of the City's  
21 Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in  
22 force. After a self-insurance certification is approved, the City may from time to time  
23 subsequently require updated or additional information. The approved self-insured Permittee  
24 must provide 30 days' prior notice of any cancellation or material adverse financial condition of  
25  
26  
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1 its self-insurance program. The City may at any time revoke approval of self-insurance and  
2 require the Permittee to obtain and maintain insurance as specified in this ordinance.

3 In the event that the Permittee assigns or transfers the permission granted by this  
4 ordinance, the Permittee shall maintain in effect the insurance required under this section until  
5 the Director has approved the assignment or transfer pursuant to Section 14 of this ordinance.  
6

7 **Section 11. Contractor insurance.** The Permittee shall contractually require that any and  
8 all of its contractors performing work contemplated by this permit name the “City of Seattle, its  
9 elected and appointed officers, officials, employees and agents” as additional insureds for  
10 primary and non-contributory limits of liability on all CGL, Automobile and Pollution liability  
11 insurance and self-insurance. The Permittee shall also include in all contract documents with its  
12 contractors a third-party beneficiary provision extending to the City construction indemnities and  
13 warranties granted to the Permittee.  
14

15 **Section 12. Performance bond.** In the event that the Permittee seeks to assign or transfer  
16 the permission granted by this ordinance, the Director in consultation with the City Attorney’s  
17 Office, may determine that a performance bond is necessary to adequately protect the City’s  
18 interests, in which case the successor entity shall deliver to the Director for filing with the City  
19 Clerk, as a condition of approval of the assignment or transfer within 60 days of notification of  
20 such determination, a sufficient bond executed by a surety company authorized and qualified to  
21 do business in the State of Washington that is in the amount determined by the Director in  
22 consultation with the City Attorney’s Office, and conditioned with a requirement that the  
23 successor entity shall comply with every provision of this ordinance and with every order the  
24 Director issues under this ordinance. The successor entity shall ensure that the bond remains in  
25 effect until the Director has issued a certification that the successor entity has fulfilled its  
26  
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28



1 removal and restoration obligations under Section 5. An irrevocable letter of credit approved by  
2 the SDOT Director in consultation with the City Attorney's Office may be substituted for the  
3 bond.

4       Section 13. **Adjustment of insurance and bond requirements.** The Director may adjust  
5 minimum liability insurance levels and surety bond requirements during the term of this  
6 permission. If the Director determines that an adjustment is necessary to fully protect the  
7 interests of the City, the Director shall notify the Permittee of the new requirements in writing.  
8 The Permittee shall, within 60 days of the date of the notice, provide proof of the adjusted  
9 insurance and surety bond levels to the Director.  
10

11       Section 14. **Consent required for any assignment or transfer.** The permission granted  
12 by this ordinance shall not be assignable or transferable by operation of law; nor shall the  
13 Permittee transfer, assign, mortgage, pledge or encumber the same without the Director's  
14 consent, which the Director shall not unreasonably refuse. The Director may approve assignment  
15 or transfer of the permission granted by this ordinance to a successor entity only if the successor  
16 or assignee has accepted in writing all of the terms and conditions of the permission granted by  
17 this ordinance; has provided, at the time of the acceptance, the bond and certification of  
18 insurance coverage required under this ordinance; and has paid any fees due under Section 17 of  
19 this ordinance. Any person or entity seeking approval for an assignment or transfer of the  
20 permission granted by this ordinance shall provide the Director with a description of the current  
21 and anticipated use of the North Beach CSO.  
22  
23

24       The obligations and conditions imposed on the Permittee by and through this ordinance  
25 are also imposed on the Permittee's successors and assigns regardless of whether the Director  
26 has approved assignment or transfer of the permission granted by this ordinance to the successors  
27  
28



1 or assigns. All references in this ordinance to obligations or conditions imposed on the  
2 “Permittee” shall also be deemed to refer to the Permittee’s successors and assigns.

3       Section 15. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or  
4 successor provision, pay the City the amounts that may be charged by the City to inspect the  
5 North Beach CSO during construction, reconstruction, repair, safety inspections, and at other  
6 times deemed necessary by the City. No inspection or approval by the City shall be construed as a  
7 representation, warranty or assurance to the Permittee or any other person as to the safety or  
8 soundness of any structure or condition, nor as to compliance with this ordinance or any agreement  
9 or standard. Any failure by the City to require correction of any defect or condition shall not in any  
10 way limit the responsibility or liability of the Permittee.  
11

12       Section 16. **Inspection reports.** The Permittee shall submit to the Director, or to the  
13 Department of Transportation at an address specified by the Director, an inspection report that:  
14

- 15           (a) describes the physical dimensions and condition of all load-bearing  
16 elements;  
17           (b) describes any damages or possible repairs to any element of the North  
18 Beach CSO;  
19           (c) prioritizes all repairs and establishes a timeframe for making repairs; and  
20           (d) is stamped by a professional engineer licensed in the State of Washington.  
21

22       The report meeting the foregoing requirements shall be submitted in the event of a natural  
23 disaster or other event that may have damaged the North Beach CSO, and shall be submitted by  
24 the date established by the Director. The Permittee has the duty of inspecting and maintaining the  
25 North Beach CSO, and the responsibility to submit structural inspection reports as required by  
26 the Director does not waive or alter any of the Permittee’s other obligations under this ordinance.  
27



1 The receipt of any reports by the Director shall not create any duties on the part of the  
2 Director. Any failure by the Director to require a report, or to require action after receipt of any  
3 report, shall not waive or limit the obligations of the Permittee.

4 Section 17. **Annual fee.** Beginning on the effective date of this ordinance, and annually  
5 thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the  
6 Director, an annual fee of \$3,916.50.

7  
8 Adjustments to the annual fee shall be made in accordance with a term permit fee  
9 schedule adopted by the City Council and may be made every year. In the absence of a schedule,  
10 the Director may only increase or decrease the previous year's fee to reflect any inflationary  
11 changes so as to charge the fee in constant dollar terms. This adjustment will be calculated by  
12 adjusting the previous year's fee by the percentage change between the two most recent year-end  
13 values available for the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All  
14 Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the  
15 City Finance Director for credit to the Transportation Operating Fund.

16  
17 Section 18. **Compliance with laws.** The Permittee shall construct, maintain and operate  
18 the North Beach CSO in compliance with all applicable federal, state, County, and City laws and  
19 regulations. Without limitation, in all matters pertaining to the North Beach CSO, the Permittee  
20 shall comply with the City's laws prohibiting discrimination in employment and contracting  
21 including Seattle's Fair Employment Practices Ordinance, Chapter 14.04, and Fair Contracting  
22 Practices code, Chapter 14.10, or successor provisions.

23  
24 Section 19. **Acceptance of terms and conditions.** The Permittee shall deliver to the  
25 Director its written signed acceptance of the terms of this ordinance within 60 days after the  
26 effective date of this ordinance. The Director shall file the written acceptance with the City  
27



1 Clerk. If an acceptance is not received within that 60-day period, the privileges conferred by this  
2 ordinance shall be deemed declined or abandoned and the permission granted deemed lapsed and  
3 forfeited. The Permittee shall not commence construction of the North Beach CSO prior to the  
4 Permittee delivering its written signed acceptance of the terms of this ordinance and providing  
5 the certification of insurance coverage required by this ordinance.  
6

7       **Section 20. Obligations run with the Property.** The obligations and conditions imposed  
8 on the Permittee by and through this ordinance are covenants that run with the land and bind  
9 subsequent owners of the property adjacent to the North Beach CSO and legally described in  
10 Section 1 of this ordinance (the "Property"), regardless of whether the Director has approved  
11 assignment or transfer of the permission granted to such subsequent owners.  
12

13       At the request of the Director, the Permittee shall provide to the Director a current title  
14 report showing the identity of all owners of the Property and all encumbrances on the Property.

15       The Permittee shall, within 60 days of the effective date of this ordinance, and prior to  
16 conveying any interest in the Property, deliver to the Director on a form to be supplied by the  
17 Director, a covenant agreement imposing the obligations and conditions in this ordinance, signed  
18 and acknowledged by the Permittee and any other owners of the Property and recorded with the  
19 King County Recorder's Office. The Director shall file the recorded covenant agreement with the  
20 City Clerk. The covenant agreement shall reference this ordinance by its ordinance number. At  
21 the request of the Director, Permittee shall cause encumbrances on the Property to be  
22 subordinated to the covenant agreement.  
23

24       **Section 21. Section titles.** Section titles are for convenient reference only and do not  
25 modify or limit the text of a section.  
26  
27  
28



1 Section 22. This ordinance shall take effect and be in force 30 days after its approval by  
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the 10<sup>th</sup> day of June, 2013, and  
5 signed by me in open session in authentication of its passage this  
6 10<sup>th</sup> day of June, 2013.

7  
8 

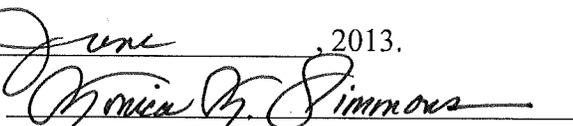
9 President \_\_\_\_\_ of the City Council

10  
11 Approved by me this 20<sup>th</sup> day of June, 2013.

12  
13 

14 Michael McGinn, Mayor

15  
16 Filed by me this 20<sup>th</sup> day of June, 2013.

17 

18 Monica Martinez Simmons, City Clerk

19 (Seal)



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

| <b>Department:</b>                   | <b>Contact Person/Phone:</b> | <b>CBO Analyst/Phone:</b> |
|--------------------------------------|------------------------------|---------------------------|
| Seattle Department of Transportation | Angela Steel/684-5967        | Christie Parker/684-5211  |

**Legislation Title:**

AN ORDINANCE granting King County Department of Natural Resources and Parks, Wastewater Treatment Division permission to construct, maintain, and operate a combined sewer overflow control system within Triton Drive Northwest as part of the existing North Beach Pump Station for an unlimited term; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

**Summary of the Legislation:**

This legislation grants the King County Department of Natural Resources and Parks, Wastewater Treatment Division ("KCWTD") permission to construct, maintain, and operate a combined sewer overflow system ("North Beach CSO") within Triton Drive Northwest as part of the existing North Beach Pump Station. An area map is attached for reference.

This permit is for an unlimited term for so long as the North Beach CSO is used to reduce the frequency of combined sewer overflows to Puget Sound at the North Beach Pump Station, subject to the right of the City to require the removal of the North Beach CSO or to revise any of the terms and conditions of the permission granted by this permit. The legislation has an insurance provision as recommended by the City Risk Manager, specifies the conditions under which authorization is granted, and provides for acceptance of the permit and conditions.

The ordinance requires KCWTD to pay the City an annual fee of \$3,916.50 commencing on the effective date of the ordinance, and annually thereafter. Adjustments to the annual fee may be made every year and if adjusted the fee shall be calculated according to the term permit fee schedule adopted by the City Council by Ordinance 123485. An Annual Fee Appraisal Summary is attached for reference.

**Background:**

By Resolution 31421, the City granted conceptual approval for the North Beach CSO project.

To complete the upgrade of the facility, Council also approved a separate Council Land Use Action under Clerk's File 312299 to allow the use of a parcel located immediately to the north of the project site as well as landscape enhancements within the City's Shoreline Overlay zone.



Please check one of the following:

X This legislation has financial implications.

Appropriations: N/A

**Anticipated Revenue/Reimbursement Resulting from this Legislation:**

| Fund Name and Number                | Department                           | Revenue Source | 2013 Revenue      | 2014 Revenue |
|-------------------------------------|--------------------------------------|----------------|-------------------|--------------|
| Transportation Operating Fund 10310 | Seattle Department of Transportation | Annual Fee –   | \$3,916.50        | TBD          |
| <b>TOTAL</b>                        |                                      |                | <b>\$3,916.50</b> | <b>TBD</b>   |

Revenue/Reimbursement Notes: N/A

**Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:** N/A

Do positions sunset in the future? No

Spending/Cash Flow: N/A

**Other Implications:**

- a) **Does the legislation have indirect financial implications, or long-term implications?**  
If the legislation is not approved by City Council, KCWTD would be out of compliance with their NPDES permit.
- b) **What is the financial cost of not implementing the legislation?**  
If the legislation is not enacted by the City Council, the City of Seattle will not receive the annual fee of \$3,916.50. As previously stated, the City of Seattle has the option to adjust the fee amount on an annual basis.
- c) **Does this legislation affect any departments besides the originating department?** No
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** None
- e) **Is a public hearing required for this legislation?** No
- f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** No
- g) **Does this legislation affect a piece of property?** Yes, an area map is attached for



reference.

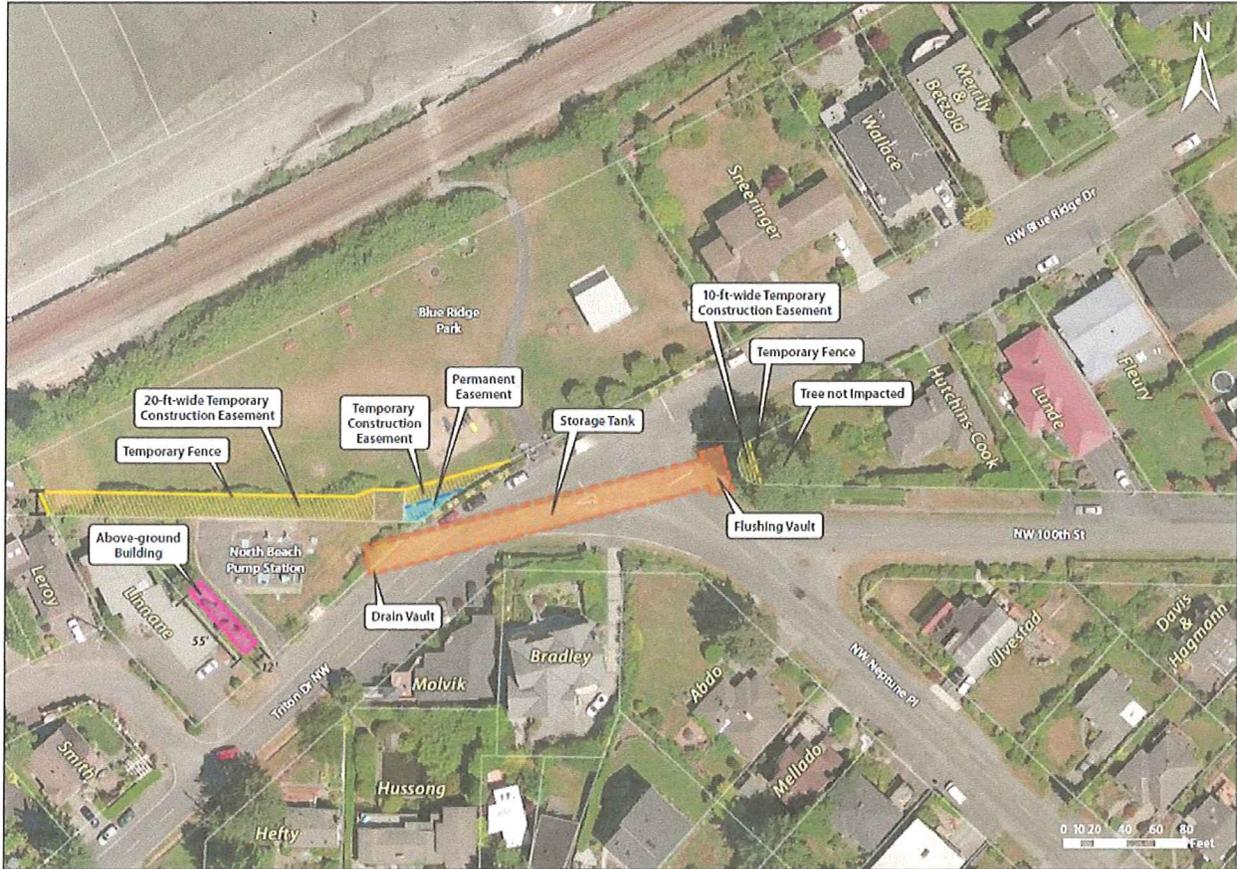
**h) Other Issues: None**

**List attachments to the fiscal note below:**

- Attachment A – King County North Beach CSO Area Map
- Attachment B – Annual Fee Assessment Summary



Attachment A – King County North Beach CSO Area Map



Map is for informational purposes only and is not intended to modify or supplement the legal description(s) in the Ordinance.



Attachment B - Annual Fee Assessment Summary

STREET USE ANNUAL FEE ASSESSMENT

Date: 3/20/13

Summary:  
**Land Value: \$31.34/SF**  
**2013 Permit Fee:**  
**\$3,916.50**

I. **Property Description:**

The King County Department of Natural Resources and Parks, Wastewater Treatment Division has proposed the construction of the combined sewer overflow control system within Triton Drive Northwest as part of the existing North Beach Pump Stations. The combined sewer overflow system area is **5,207 square feet**.

**Applicant:**

King County Department of Natural Resources and Parks, Wastewater Treatment Division

**Abutting Parcels, Property Size, Assessed Value:**

1. Parcel 6132600005, Square Feet 10,328  
Tax year 2013 Appraised Land Value \$206,500
2. Parcel 0868002485, Square Feet 58,806  
Tax year 2013 Appraised Land Value \$109,000
3. Parcel 6132600135, Square Feet 4,312  
Tax year 2013 Appraised Land Value \$342,000
4. Parcel 0868002490, Square Feet 400  
Tax year 2013 Appraised Land Value \$1,000
5. Parcel 6132600140, Square Feet 9,370  
Tax year 2013 Appraised Land Value \$456,000
6. Parcel 6132600150, Square Feet 12,136  
Tax year 2013 Appraised Land Value \$416,000



7. Parcel 0868002110, Square Feet 11,924

Tax year 2013 Appraised Land Value \$391,000

Average 2013 tax assessed land value: \$31.34/SF

II. **Annual Fee Assessment:**

The 2013 permit fee is calculated as follows:

$(\$31.34/\text{SF}) \times (5,207 \text{ SF}) \times (30\%) \times (8\%) = \boxed{\$3,916.50}$  where 30% is the degree of alienation for a below-grade utility structure and 8% is the annual rate of return.

Fee methodology authorized under Ordinance 123485.



City of Seattle  
Office of the Mayor

April 30, 2013

Honorable Sally J. Clark  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that will grant to the King County Department of Natural Resources and Parks, Wastewater Treatment Division ("KCWTD") permission to construct, maintain, and operate a combined sewer overflow control system ("North Beach CSO") within Triton Drive Northwest as part of the existing North Beach Pump Station.

The purpose of the North Beach CSO project is to reduce and control stormwater flows to the combined sewer system and the frequency of CSO events at KCWTD's North Beach Basin outfalls to Puget Sound. King County's National Pollution Discharge Elimination System Waste Discharge Permit for the West Point Wastewater Treatment Plant requires that King County limit CSO events to Puget Sound at the North Beach Pump Station to no more than one overflow per year.

Thank you for your consideration of this legislation. Should you have questions, please contact Angela Steel at 684-5967.

Sincerely,

Michael McGinn  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



Return Address:

City of Seattle  
Seattle Dept. of Transportation  
Attn: Street Use  
700 5<sup>th</sup> Ave., Suite #3900  
P. O. Box 34996  
Seattle, WA 98124-4996



**20130711001669**

KC DNRP WTD RC COV 74.00  
PAGE-001 OF 003  
07/11/2013 13:09  
KING COUNTY, WA

**Document Title(s)** (or transactions contained therein):

1. **Covenant Agreement**
- 2.
- 3.
- 4.
- 5.

**Reference Number(s) of Documents assigned or released:** (on page 1 of document(s))

**Grantor(s)** (Last name first then first name and initials)

1. **King County Department of Natural Resources and Parks, Wastewater Treatment Division**
- 2.
- 3.
- 4.
- 5.

Γ Additional names on page \_\_\_NA\_\_\_ of document

**Grantee(s)** (Last Name first, then first name and initials)

1. **City of Seattle**
- 2.
- 3.
- 4.
- 5.

Additional names on page \_\_\_NA\_\_\_ of document

**Legal Description (Abbreviated:** i.e. lot, block, plat or section, township, range)

Additional legal is on page \_NA\_ of document

**Assessor's Property Tax Parcel/Account Number**

NA – located within Right-of-Way

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

FILED  
CITY CLERK  
13 JUL 17 AM 9:48

## COVENANT AGREEMENT

THIS COVENANT AGREEMENT ("Agreement") is made and granted by King County Department of Natural Resources and Parks, Wastewater Treatment Division, a subdivision of the State of Washington, ("Grantor") in favor of the City of Seattle ("City").

### RECITALS

- A. Grantor is the owner of the real property legally described as Lot 1, Block 1, of North Beach Addition, King County, Washington hereto (the "Property").
- B. By adoption of Ordinance No. 124198 (the "Ordinance"), passed by the Seattle City Council on June 10, 2013, the City granted permission to Grantor, and its successors and assigns as approved by the Director of the Seattle Department of Transportation ("Director"), to maintain and operate a combined sewer overflow control system within Triton Drive Northwest, adjacent in whole or in part to the Property.
- C. Pursuant to the Ordinance, all of the obligations and conditions imposed by the Ordinance on Grantor are also imposed on Grantor's successors and/or assigns regardless of whether the Director has approved assignment or transfer to them of the permission granted by the Ordinance.
- D. The Ordinance provides that the obligations and conditions imposed by the Ordinance on Grantor are covenants that run with the land and bind subsequent owners of the Property regardless of whether the Director has approved assignment or transfer to them of the permission granted by the Ordinance, and the Ordinance requires Grantor to execute and record a covenant agreement containing the obligations and conditions set forth in the Ordinance.

### COVENANTS

NOW, THEREFORE, in consideration of the foregoing, Grantor hereby agrees and covenants for itself and its successors and assigns, as follows:

- 1. Grantor agrees to comply with all of the obligations and conditions that the Ordinance imposes upon the "Permittee" under the Ordinance.
- 2. The covenant set forth in the previous paragraph runs with the Property and binds Grantor's heirs, successors and assigns, regardless of whether the Director of the Seattle Department of Transportation has approved assignment or transfer to them of the permission granted by the Ordinance.
- 3. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, Grantor has executed this Agreement on the day and year indicated below.

GRANTOR:

KING COUNTY

By: Pamela Erstad

Title: Water Quality Planner/Program Manager,  
King County Wastewater Treatment Division

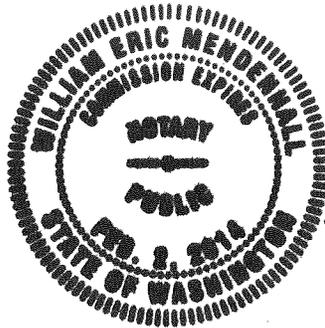
State of Washington )

) s.s.

County of King )

This is to certify that on this 2nd day of July 2013, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared Pamela Erstad to me known to be the agent of King County that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said party, for the uses and purposes mentioned in the document, and on oath stated that he was authorized to execute said instrument.

In WITNESS Whereof I have hereunto set my hand and affixed my official seal, the day and year first above written.



William E Mendenhall, Notary Public in  
and for the State of Washington

Residing at Seattle, King County

My appointment expires 2/2/2014

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STATE OF WASHINGTON -- KING COUNTY

--SS.

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299527  
CITY OF SEATTLE, CLERKS OFFICE

No.

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

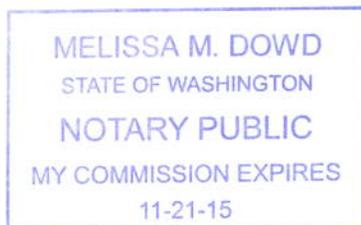
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:124195-124203 TITLE

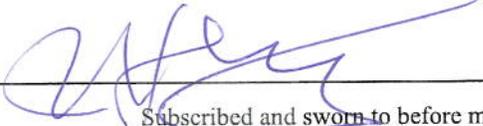
was published on

06/28/13

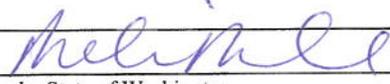
The amount of the fee charged for the foregoing publication is the sum of \$164.18 which amount has been paid in full.



Affidavit of Publication

  
Subscribed and sworn to before me on

06/28/2013

  
Notary public for the State of Washington,  
residing in Seattle

# State of Washington, King County

## City of Seattle

The full text of the following legislation, passed by the City Council on June 10, 2013, and published below by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For information on upcoming meetings of the Seattle City Council, please visit <http://www.seattle.gov/council/calendar>. Contact: Office of the City Clerk at (206) 684-8344.

### ORDINANCE NO. 124195

AN ORDINANCE related to the 2013 Budget; amending Ordinance 124058, which adopted the 2013 Budget, including the 2013-2018 Capital Improvement Program (CIP); changing appropriations to various departments and budget control levels, and from various funds in the Budget; adding new projects; making cash transfers between various City funds; revising project allocations for certain projects in the 2013-2018 CIP; creating positions; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City Council.

### ORDINANCE NO. 124196

AN ORDINANCE authorizing, in 2013, acceptance of funding from non-City sources; authorizing the heads of the Seattle Fire Department, Seattle Police Department, Executive Department, Department of Planning and Development, Department of Parks and Recreation, Human Services Department, Department of Information Technology, Department of Transportation, Seattle City Light, and Seattle Public Utilities to accept specified grants and private funding and to execute, deliver, and perform corresponding agreements; and ratifying and confirming certain prior acts.

### ORDINANCE NO. 124197

AN ORDINANCE granting Apex Hotel Condominium Association of Apartment Owners permission to maintain and operate a concrete shear wall on the east side of the alley between 1st Avenue and Western Avenue, south of Bell Street for a ten year term; renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

### ORDINANCE NO. 124198

AN ORDINANCE granting King County Department of Natural Resources and Parks, Wastewater Treatment Division permission to construct, maintain, and operate a combined sewer overflow control system within Triton Drive Northwest as part of the existing North Beach Pump Station for an unlimited term; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

### ORDINANCE NO. 124199

AN ORDINANCE granting Saturn Building LLC permission to construct, maintain, and operate a Saturn sculpture and solar collector over Evanston Avenue North, south of North 35th Street, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

### ORDINANCE NO. 124200

AN ORDINANCE relating to the Seattle Center; authorizing the Seattle Center Director to execute a five year extension to an agreement with SMG, doing business as SAVOR, for the management of food and beverage services at Marion Oliver McCaw Hall at Seattle Center.

### ORDINANCE NO. 124201

AN ORDINANCE seeking to increase public safety and job assistance through reducing criminal recidivism and enhancing positive reentries to society by prohibiting certain adverse employment actions against individuals who have been arrested, convicted, or charged with a crime; and adding Chapter 14.17 to the Seattle Municipal Code.

### ORDINANCE NO. 124202

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

### ORDINANCE NO. 124203

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of a ten-year lease agreement with two five-year options to extend with Pottery Northwest, Inc., for use of space on the Seattle Center campus.

Date of publication in the Seattle Daily Journal of Commerce, June 28, 2013.

6/28(299527)