



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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February 8, 2012

Mikael Love, Assistant Public Works Director
City of Mount Vernon Public Works
PO Box 809
Mount Vernon, WA 98273

RE: Water Quality Certification Order #8933 for U.S. Army Corps of Engineers Public Notice
#NWS-2011-841, Anderson/LaVenture Road Extension Project, Phase III, Blackburn Road to
Blodgett Road, Wetlands and Maddox Creek, Mount Vernon, Skagit County, Washington

Dear Mikael Love:

On October 27, 2011, City of Mount Vernon Public Works submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed Anderson/LaVenture Road Extension Project, Phase III, Blackburn Road to Blodgett Road. A revised JARPA and JARPA Addendum were submitted to Ecology on November 17, 2011.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Erik Stockdale
Northwest Regional Office
Shorelands and Environmental Assistance Program

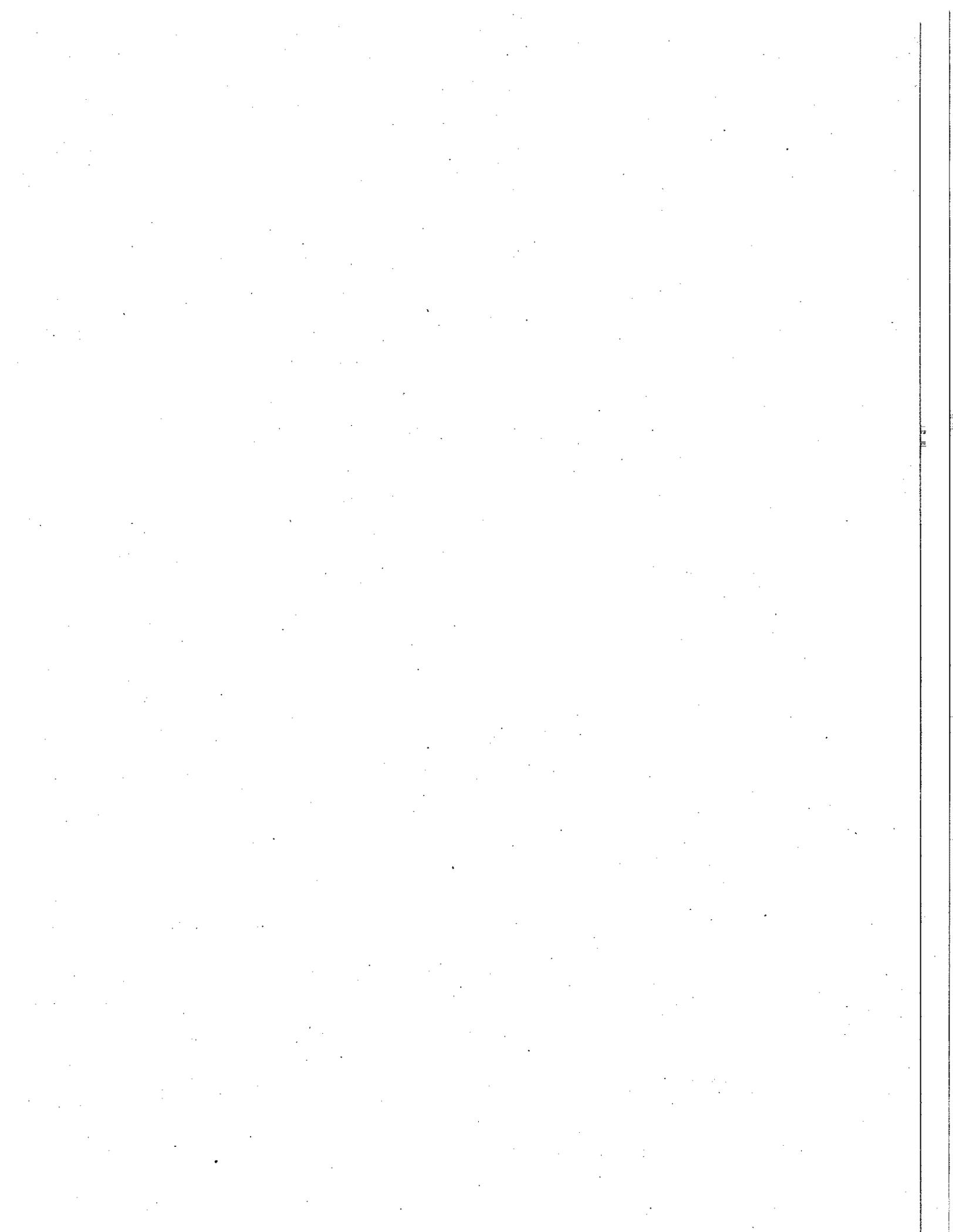
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Enclosure

By certified mail: 7011 0470 0003 3720 9374

cc: Randel Perry, U.S. Army Corps of Engineers
Ross Widener, Widener and Associates
Jeff Kamps, Washington Department of Fish and Wildlife
E-cc: Paul Anderson, Ecology
Brad Murphy, Ecology
Raman Iyer, Ecology
Loree' Randall, Ecology
ecyrefedpermits@ecy.wa.gov





IN THE MATTER OF GRANTING A) ORDER #8933
WATER QUALITY) Corps Reference #NWS-2011-841
CERTIFICATION TO) Anderson/LaVenture Road Extension Project,
City of Mount Vernon Public Works) Phase III, Blackburn Road to Blodgett Road;
in accordance with 33 U.S.C. 1341) Wetlands and Maddox Creek, Mount Vernon,
(FWPCA § 401), RCW 90.48.120, RCW) Skagit County, Washington.
90.48.260 and Chapter 173-201A WAC)

TO: Mikael Love, Assistant Public Works Director
City of Mount Vernon Public Works
PO Box 809
Mount Vernon, WA 98273

On October 27, 2011, City of Mount Vernon Public Works submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A revised JARPA and JARPA Addendum were received by Ecology on November 17, 2011. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on November 23, 2011.

In order to widen the road, install safety improvements, and install a bridge, the proposal includes 0.12 acre of excavation within Wetland D, 2.55 acres of fill within Wetlands A, B, C, and E, and 0.25 acre of fill within several jurisdictional drainage ditches. The 80-foot bridge span will replace a 42-inch-diameter, 83-foot-long pipe. Bridge work includes approximately 1,260 square feet of re-grading within the stream channel.

As described above, the project proposes to permanently impact a total of 2.67 acres of wetlands for road extension. These impacts will be compensated for by purchasing 2.65 credits from the Nookachamps Mitigation Bank.

The project is located adjacent to Interstate 5 at exit 225, in Mount Vernon, Skagit County, Washington, in wetlands and Maddox Creek, Sections 28, 29, and 32, T. 34N, R. 4E, WRIA 3.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306 and 307);

2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

- A1. For purposes of this Order, the term "Applicant" shall mean City of Mount Vernon Public Works and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #8933 and Corps Reference #NWS-2011-841.
- A3. Work authorized by this Order is limited to the work described in the JARPA and JARPA Addendum received by Ecology on November 17, 2011. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.

- A4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
- A5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 404 permit.
- A6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
- A7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
- A9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project or mitigation sites.
- A10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
- A11. 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.
- B. Wetland Compensatory Mitigation:**
- B1. The project proposes to fill 2.57 acres of palustrine forested and emergent Category III wetlands and 0.10 acre of Category IV palustrine emergent wetland; to be mitigated through the purchase of 2.65 mitigation credits from the Nookachamps Mitigation Bank.

These measures are described in the following documents, except as modified by this Order, and including any approved revisions:

- a. Letter from Ross Widener, Widener & Associates, to Randel Perry, U.S. Army Corps of Engineers, RE: Wetland Mitigation Bank Use Plan, Anderson LaVenture Road Extension Project Phase III (Ref # NWS-2011-841), Skagit County, Washington, dated November 9, 2011.
- b. Letter from Ross Widener, Widener & Associates, to Randel Perry, U.S. Army Corps of Engineers, RE: JARPA Addendum, Anderson/LaVenture Blackburn to Blodgett Road Extension Project Phase III, Skagit County, Washington (Ref# NWS-2011-841), dated November 9, 2011.

B2. In addition to mitigation measures described in the above-referenced documents, the following requirement shall be conditions for the development and mitigation sites:

- a. Proof of Mitigation Bank Credit Purchase: Prior to impacting wetlands, including buffers, associated with the construction of the project, the Applicant shall submit the following to Ecology per Condition A2:
 - i. The Applicant shall obtain and submit registered documentation from the bank sponsor identifying the first permit requiring a minimum of 2.65 credits for the project to Ecology (see A.2). This documentation must be submitted to Ecology (see A.2) within 60 days of the issuance of this certificate. This documentation must be registered at the Skagit County Auditor's office and must include the Corps Reference #NWS-2011-841 showing the date that the Corps 404 permit is issued, Ecology Order #8933 showing that the Order was issued on February 8, 2012, and the amount of credits required by the permit.
 - ii. The Applicant shall notify Ecology (see A.2) of any changes to the amount of wetland impacts, revision of the mitigation plan, and submittal of new information being registered at the Skagit County Auditor's office.
 - iii. The Applicant shall complete the purchase of mitigation bank credits before the impacts to wetlands occur or Ecology may require additional compensation to account for additional temporal loss.

C. Water Quality Conditions:

- C1. Maddox Creek is classified as "Salmonid Spawning, Rearing, and Migration" and the criteria of that class apply except as specifically modified by this Order. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200(1)(e)(i).

C2. In-Water Construction Water Quality Sampling and Monitoring: A Water Quality Protection and Monitoring Plan (Plan) shall be developed and implemented. "In-water construction" is defined as all work below the ordinary high water mark of Maddox Creek.

The Plan shall include the following minimum requirements:

- a. Locations of samples: Locations of water quality sampling sites shall be identified and described in the Plan and on a map of the project area. At a minimum, sampling shall take place at the point of compliance as specified in WAC 173-201A-200(1)(e)(i), which allows a 100-foot temporary area of mixing for turbidity resulting from disturbance of in-place sediments in Maddox Creek. Background samples shall be collected outside the area of influence of the in-water work. Background samples shall be collected at the same frequency as the point of compliance samples.
- b. Number of samples: Number and frequency of water quality samples to be taken.
- c. Parameter to be sampled: Turbidity shall be sampled for this project.
- d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.
- e. Best Management Practices (BMPs): A description of the BMPs that will be used during construction to protect water quality.
- f. Detection of exceedances: Water quality standards for turbidity in "Salmonid Spawning, Rearing, and Migration" waters are as follows: turbidity shall not exceed 5 NTU over background conditions when the background is 50 NTU or less, or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. If exceedances of this standard at the point of compliance specified in WAC 173-201A-200(1)(e)(i) is detected through water quality sampling and monitoring, the Applicant shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, the Applicant shall assess the efficacy of the site BMPs and update or improve the BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity exceedance.
- g. Reporting: If no exceedances are detected, results of water quality sampling, as determined by the Plan, shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.

- h. Notification of exceedances: Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #8933, Attn: 401/CZM Federal Project Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:
- i. A description of the nature and cause of exceedance.
 - ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance.
 - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
 - iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the exceedance, turbidity results and location, photographs, and any other pertinent information.

D. Conditions for Construction Activities:

General Conditions:

- D1. Applicant shall obtain and comply with a Construction Stormwater General Permit for this project.
- D2. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- D3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- D4. All construction debris shall be properly disposed of in a manner to prevent it from entering the wetlands and/or wetland buffers.
- D5. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.

- D6. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- D7. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.
- D8. Clean Fill Criteria: Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.
- D9. All heavy equipment shall operate above the Ordinary High Water Mark (e.g., culvert removal and re-grading activities).
- D10. The Applicant shall use tarps or other containment method when cutting or drilling over water to prevent debris, sawdust, concrete and asphalt rubble, and other materials from entering the water.
- D11. If cast in place, wet concrete/grout shall be prevented from entering waters of the state. Forms for any concrete/grout structure shall be constructed to prevent leaching of wet concrete/grout. Impervious materials shall be placed over any exposed concrete/grout not lined with the forms that will come in contact with state waters. Forms and impervious materials shall remain in place until the concrete/grout is cured.
- D12. Native riparian vegetation shall be left in place along the shoreline to the extent practicable.

E. Emergency/Contingency Measures:

- E1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- E2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- E3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
- E4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state

waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:

- a. Cease operations at the location of the violation or spill.
- b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
- c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, and within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
- d. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

F. Timing Requirements

- F1. This Order expires five (5) years from the date of issuance of the Corps permit.

G. Reporting and Notification Requirement Conditions

- G1. The Applicant shall provide to Ecology's 401/CZM Federal Permit Manager a copy of the final Corps permit within 2 weeks of receipt of the permit. A copy shall be submitted per condition A2 above.
- G2. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #NWS-2011-841, Order #8933 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.
- G3. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction is complete.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do all of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel RD SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903



Erik Stockdale, Unit Supervisor
Wetlands/401 Unit
Shorelands and Environmental Assistance Program
Northwest Regional Office

2-8-2012

February 8, 2012

ATTACHMENT A

**CITY OF MOUNT VERNON PUBLIC WORKS
ANDERSON/LAVENTURE ROAD EXTENSION PROJECT,
PHASE III, BLACKBURN ROAD TO BLODGETT ROAD
Water Quality Certification Order #8933**

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

I have read and understand the conditions of Order #8933 Section 401 Water Quality Certification for the City of Mount Vernon Public Works, Anderson/LaVenture Road Extension Project, Phase III; Blackburn Road to Blodgett Road. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company