



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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September 20, 2010

Arnold Peterschmidt P.E.
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

RE: Water Quality Certification Order #7917 for U.S. Army Corps of Engineers Public Notice #NWS-2009-1151, Windjammer Park Stormwater Outfall Replacement Project, in Oak Harbor, Island County, Washington

Dear Mr. Peterschmidt:

On September 24, 2009, the City of Oak Harbor 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 Windjammer Park Stormwater Outfall Replacement project.

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

ES:rrp:mrc

Enclosure

By certified mail 7008 1140 0000 2359 8480

cc: Vicky Didenhover, U.S. Army Corps of Engineers
Doug Thompson, Washington Department of Fish and Wildlife
Jeff Schreck, Washington Department of Natural Resources
Margaret Schwertner, Moffatt & Nichol

ecc: David Pater – NWRO
Loree' Randall – HQ
Raman Iyer – NWRO
ecyrefedpermits@ecy.wa.gov



IN THE MATTER OF GRANTING A) ORDER #7917
WATER QUALITY) Corps Reference #NWS-2009-1151
CERTIFICATION TO) Windjammer Park Stormwater Outfall
City of Oak Harbor) Replacement Project; Oak Harbor Bay, Oak
in accordance with 33 U.S.C. 1341) Harbor, Island County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Arnold Peterschmidt P.E.
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

On September 24, 2009, the City of Oak Harbor submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. 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 May 7, 2010.

The outfall replacement proposal includes:

West stormwater outfall:

- Remove the last 320 linear feet of the existing 42-inch-diameter corrugated steel outfall.
- Replace the existing outfall with a new 42-inch-diameter stormwater outfall. Of the new 481-foot outfall, 273 feet will be HDPE and 208 feet will be steel pipe. The outfall will be installed approximately 245 feet to the east of its current location and will extend approximately 70 feet further waterward than the existing outfall.

East stormwater outfall:

- The existing 185-linear-foot, 42-inch-diameter, re-enforced concrete pipe outfall will remain in place. The outfall will be extended approximately 70 feet further waterward with steel pipe.

Anchoring system:

- Install an anchor system to stabilize the two outfalls. The system will include large boulders and up to 20 20-foot-long steel helical anchors.

Upland work:

- Install one new 9-foot-deep manhole as an access point for the replacement of the west stormwater outfall.

- Excavation of approximately 250 cubic yards of soil to replace the west stormwater outfall.
- Install up to 300 cubic yards of imported gravel for pipe bedding in the upland trench for the west outfall.
- Removal of the existing west stormwater outfall.
- Replace disturbed landscaping or asphalt (associated with the parking area or trail) if needed.

Shoreline work:

- Excavate approximately 1,500 cubic yards of beach material (gravel and sand) waterward of the Mean Higher High Water line. Material will be used as backfill for the outfalls and to rework the west outfall site.
- Removal of up to 200 cubic yards of riprap from the beach at the existing west and east outfalls.
- Install up to 150 cubic yards of imported gravel for pipe bedding in the shallow zero to 2-foot trench for the west outfall and east outfall extension.
- Reuse up to 50 cubic yards of riprap from the existing piles of riprap on the beach for scour protection of the modified ends of the east and west outfalls.

Mitigation for the proposal would include removal of existing riprap from the end of the outfalls, an overall net decrease in beach shading of approximately 360 square feet, and an improvement in overall slope characteristics of the beach through riprap removal.

The project is located at 1600 SE Beeksma Drive in Oak Harbor, Island County, Washington, Oak Harbor Bay, Section 2, T. 32N, R. 1E, WRIA 6.

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, 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 Oak Harbor 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 #7917 and Corps Reference #NWS-2009-1151.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on September 24, 2009. 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. Conditions for Construction Activities:

General Conditions:

- B1. Applicant shall obtain and comply with a Construction Stormwater General Permit for this project, if required.
- B2. 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.
- B3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.

- B4. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- B5. 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.
- B6. 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.
- B7. 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.
- B8. Excavated material shall be stockpiled upland and prevented from entering waters of the state.

Dewatering:

- B9. The Applicant shall develop and implement a dewatering, sampling, and discharge plan to address dewatering of excavated material.
- B10. Turbid water shall not be allowed directly into waters of the state.

Work in Marine Waters:

- B11. Oak Harbor is classified as "Excellent quality" 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-210(1)(e)(i).
- B12. All manmade debris that has been deposited below the Ordinary High Water Line within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete rubble, metal debris, and other debris in the construction work corridor that have washed into marine areas shall be removed from the project area.
- B13. Project activities shall be conducted to minimize siltation of the beach area and bed.
- B14. Excavation below the Ordinary High Water Line shall be performed, whenever practicable, during low tide when the water level is lower than the excavation area.

- B15. Hand-held equipment shall be used, whenever practicable, for work activities below the Mean Higher High Water Line.
- B16. Excess excavated material (e.g., soil, riprap) will be transported off site to an appropriate approved upland disposal site

C. Emergency/Contingency Measures:

- C1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- C2. 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.
- C3. 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.
- C4. 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.

D. Timing Requirements

D1. This Order expires five (5) years from the date of issuance of the Corp permit.

E. Reporting and Notification Requirement Conditions

E1. 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.

E2. 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-2009-1151, Order #7917 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

F. Appeal Process:

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

Deliver your appeal in person to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Department of Ecology
Northwest Regional Office
Attn: Rebekah Padgett
3190 160th Avenue SE
Bellevue, WA 98008

For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated 9/20/10 at Bellevue, Washington.



Erik Stockdale, Unit Supervisor
Northwest Regional Office
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

**CITY OF OAK HARBOR
WINDJAMMER PARK STORMWATER OUTFALL REPLACEMENT PROJECT
Water Quality Certification Order #7917**

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

I have read and understand the conditions of Order #7917 Section 401 Water Quality Certification for the City of Oak Harbor Windjammer Park Stormwater Outfall Replacement Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company