



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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July 9, 2013

Mr. Tom Murley  
Washington State Parks and Recreation Commission  
220 North Walnut Street  
Burlington, Washington 98233

RE: Water Quality Certification Order No. 9943 for Corps Nationwide Permit 13,  
NWS-2012-00411 for the Bay View State Park Shoreline Stabilization,  
Improvements, and Restoration, Skagit County, Washington

Dear Mr. Murley:

On May 4, 2012, the Washington State Parks and Recreation Commission submitted a Joint Aquatic Resources 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 Bay View State Park shoreline stabilization, improvements, and restoration project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and Nationwide Permit 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 Jessica Moore at (360) 407-7421. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Brenden McFarland  
Environmental Review and Transportation Section  
Shorelands and Environmental Assistance Program

by Certified Mail 7010 2780 0000 2503 3440



Enclosure

e-cc: Erin Legge, U.S. Army Corps of Engineers, Seattle District  
Loree' Randall – Ecology, SEA-HQ  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

**IN THE MATTER OF GRANTING A ) ORDER No. 9943**  
**WATER QUALITY ) Corps Reference No. NWS-2012-00411**  
**CERTIFICATION TO ) Shoreline stabilization, improvement, and**  
**Washington State Parks and ) restoration at Bay View State Park, Bayview,**  
**Recreation Commission ) Skagit County.**  
in accordance with 33 U.S.C. 1341 )  
(FWPCA § 401), RCW 90.48.120, RCW )  
90.48.260 and Chapter 173-201A WAC )

TO: Mr. Tom Murley  
Washington State Parks and Recreation Commission  
220 North Walnut Street  
Burlington, Washington 98233

On May, 4, 2012, the Washington State Parks and Recreation Commission submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. The Army Corps of Engineers, Seattle District issued a Nationwide Permit 13, *Bank Stabilization*, for this project on April 22, 2013. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on May 10, 2013.

The proposed project will occur in two phases. Phase I will provide a permanent protection measure for the Bay View State Park wastewater treatment drain field with the construction of a 620 linear foot rock revetment landward of the Ordinary High Water Mark (OHWM) at the 100-foot drain field buffer. Phase II will include soft shore stabilization and restoration below the OHWM, including removal of rock from the intertidal beach and shoreline, various beach fill, revegetation, and a new rock groin and beach sill. Phase II will also provide fish spawning substrate on the west and south beaches and install dune restoration areas.

The proposed project is located at Bay View State Park at the south east corner of Padilla Bay, near Bayview, Skagit County, Washington; SE quarter of Section 30, Township 35 North, Range 3 East; WRIA 3, Lower Skagit/Samish Watershed.

**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 meet the 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:**

1. For purposes of this Order, the term "Applicant" shall mean the Washington State Parks and Recreation Commission, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Headquarters Office, Attn: 401/CZM Federal Permit Manger, P.O. Box 47600 Olympia, WA 98504-7600 or [ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov). Any submittals shall reference Order No. 9943 and Corps Reference No. NWS-2012-00411.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on May 4, 2012. The Applicant will be out of compliance with this Order and must submit an updated JARPA if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
4. 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.
5. The Applicant shall keep 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.

6. The Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
7. 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. Furthermore, 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.
8. The Applicant shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work 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 signatory that s/he has read and understands the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins.
9. 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.
10. 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. Notification Requirements:**

1. The Applicant shall provide written notification (FAX, e-mail, or mail) to Ecology's 401/CZM Federal Permit Manager in accordance with condition A.2. for the following activities:
  - a. At least ten (10) days prior to the onset of any work on site
  - b. At least ten (10) days prior to the onset of in-water work
  - c. Within fourteen (14) days after completion of project construction
  - d. Immediately following a violation of the state water quality standards or any condition of this Order
2. If project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit a written construction status report. Status reports shall be submitted every 12 months thereafter until project construction is complete.

NOTE: These notifications shall include the Applicant's name, project name, project location, the number of this Order, project contact and contact's phone number.

**C. Water Quality Conditions:**

1. Padilla Bay is classified as "Excellent" and the criteria of that classification applies as described in WAC 173-201A-210(1) except specifically modified by this Order.
2. This Order does not authorize the Applicant to exceed applicable state water quality standards for turbidity as described in WAC 173-201A-210(1)(e). For this project, the following is considered to be an exceedance of the standard:
  - a. 5NTU 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.
  - b. The point of compliance shall be at a radius of 150 feet from the activity causing the turbidity exceedance.
3. Notification of exceedances: If water quality exceedances are detected outside of the point of compliance, work causing the problem shall cease immediately and the Applicant or the contractor shall assess the problem and take immediate action to stop, contain, correct the problem and/or prevent further water quality turbidity exceedances. If an exceedance occurs, the Applicant shall follow the protocols and notification procedures below:
  - a. Notification of exceedances that are detected through water quality monitoring shall be made to Ecology **within 24 hours of occurrence**. Notification shall be made with per Condition A.2. 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 the 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:**

1. To the extent practicable, project activities shall occur when the project area is dry during low tide to minimize turbidity.

2. 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.
3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
4. Under no circumstances shall a blockage to stream flow or fish passage be created.
5. Project activities shall be conducted to minimize siltation of the beach area and bed.
6. Native riparian vegetation shall be left in place along the shoreline to the extent practicable.
7. No petroleum products, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
8. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in a confined area in order to prevent contamination to waters of the state. Fuel areas shall be provided with adequate spill containment.
9. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to waters of the state.
10. Clean Fill Criteria: The Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.
11. 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.
12. Excavated materials, construction debris and equipment shall not be stockpiled on a temporary or permanent basis below the Ordinary High Water Line (OHWL).
13. Fill for the project shall come from excavated soils and sediments within the project area.
14. All natural habitat features on the beach larger than 12 inches in diameter shall be retained on the beach following construction.
15. Any excavation or grading activities below the OHWM shall use BMPs to control and contain turbidity.
16. Material, such as, but not limited to, gravel, sand, cobbles, shall not be end dumped directly into state waters but placed in a controlled manner so as to minimize turbidity.

**E. Emergency/Contingency Measures:**

1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
2. 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.
3. Fuel hoses, oil drums, or fuel transfer valves, fitting, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into waters of the state.
4. 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 waters of the state, including wetlands, or onto land with a potential for entry into waters of the state, 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. In the event of finding distressed or dying fish, the Applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the Applicant is instructed by Ecology on what to do with them. Ecology may require analysis of these samples before allowing the work to resume.
  - d. In the event of a discharge of oil, fuel, or chemicals into waters of the state, or onto land with a potential for entry into waters of the state, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
  - e. 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 Permit Manager at 360-407-7421.
  - f. Submit a detailed written report to Ecology's Federal Permit Manager 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:**

1. This Order expires two (2) years from the date of issuance.
2. All in-water work shall be completed by the work window identified in the most current Hydraulic Project Approval (HPA) issued for this project. Any project change that requires a new or revised HPA should also be sent to Ecology for review.

**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**

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

**SIGNATURE**

Dated this July 9, 2013 at the Department of Ecology, Lacey Washington



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Brenden McFarland, Section Manager  
Shorelands and Environmental Assistance Program  
Headquarters Office – Ecology  
State of Washington

**ATTACHMENT A**

**Washington State Parks and Recreation Commission  
Bay View State Park Shoreline Stabilization, Improvements, and Restoration  
Water Quality Certification Order No. 9943**

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

I have read and understand the conditions of Order No. 9943 Section 401 Water Quality Certification for the Bay View State Park Shoreline Stabilization, Improvements, and Restoration. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Company

\_\_\_\_\_  
Title

