



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

February 16, 2007

REGISTERED MAIL
RB 670 438 174 US

Snohomish County Department of Parks and Recreation
Attn: James Yap, Senior Planner
Willis Tucker Community Park
6705 Puget Park Drive
Snohomish, WA 98296

Dear Mr. Yap:

RE: Water Quality Certification Order #4051 for U.S. Army Corps of Engineers
(Corps) Reference #200500376 to Construct Canoe and Kayak Launch Facilities at
South Ebey Island and Spencer Island, Ebey Slough and Steamboat Slough,
Everett, Snohomish County, Washington

On August 24, 2005, Snohomish County Parks and Recreation 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 (CWA) for the proposed Canoe and Kayak Launch Facilities project. On August 10, 2006, a request to withdraw and re-apply for a 401 Certification was submitted in order to extend the review period for this project. The project proposes to construct boat launches at two locations, South Ebey Island and Spencer Island. Mitigation for the proposed work includes planting an approximately 5,000-square-foot buffer enhancement area at the Spencer Island site. The Corps issued a joint public notice for a Section 404 and Section 10 Permit on July 22, 2005, for the proposed project.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the JARPA received on August 24, 2005, and the July 22, 2005, 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.



Snohomish County Dept
of Parks and Recreation
February 16, 2007
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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,

A handwritten signature in black ink, appearing to read 'Geoff Tallent', with a long horizontal flourish extending to the right.

Geoff Tallent
Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:rrp:cja
Enclosure

cc: Susan Glenn, U.S. Army Corps of Engineers
David Brock, Washington Department of Fish and Wildlife
Stephanie Cotton, Snohomish County Public Works

e-cc: Penny Keys – HQ
Loree' Randall – HQ
Paul Anderson – NWRO

IN THE MATTER OF GRANTING A) ORDER #4051
WATER QUALITY) Corps Reference No. 200500376
CERTIFICATION TO) Canoe and Kayak Launch Facilities Project;
Snohomish County Parks and) Ebey Slough and Steamboat Slough, City of
Recreation) Everett, Snohomish County, Washington.
in accordance with 33 U.S.C. 1341)
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Snohomish County Department of Parks and Recreation
Attn: James Yap, Senior Planner
Willis Tucker Community Park
6705 Puget Park Drive
Snohomish, WA 98296

On August 24, 2005, Snohomish County Parks and Recreation submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A request to withdraw and re-apply for a 401 Certification was submitted on August 10, 2006. 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 July 22, 2005.

The proposed project will be conducted at two sites to create canoe and kayak access sites at South Ebey Island and Spencer Island. The work at the South Ebey Island site includes:

- Construct a 13- by 15-foot wooden dock floating on passive water ballast floats, attached to two (2) 12-inch-diameter steel pilings;
- Install a 50-foot-long by 3-foot-wide grated aluminum gangway suspended between the dock and the wooden approach ramp;
- Construct a 15-foot-long wooden approach ramp anchored to a 10- by 12-foot cast-in-place concrete pad, to be partially excavated into the dike and supported by an 8-inch-diameter steel piling; and
- Associated upland improvements.

The proposed work at the Spencer Island site includes:

- Cutting a 20.5-foot-long, 4-foot-wide path roughly 3 feet deep into an existing dike and laying down gravel and soil solidifying agent;

- Installing gravel ballast fill within a GeoWeb fabric, creating an 8.5- by 24-foot in-water ramp; and
- The bottom of Union Slough will be excavated and backfilled with approximately 30 cubic yards of fill material.

Mitigation for the proposed work includes planting an approximately 5,000-square-foot buffer enhancement area at the Spencer Island site, as described in the October 11, 2006, amendment to the Critical Area Study and Habitat Management Plan and on Sheet 5 of the February 2006 plan set.

The project is located at South Ebey Island and Spencer Island, Everett, Washington, in Section 15, T. 29 N., R. 5 E., and Section 21, T. 29 N., R. 5 E., WRIA 7.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, 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 Snohomish County Parks and Recreation 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 #4051 and Corps Reference # 200500376.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on August 24, 2005. 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 US Army Corps of Engineers does not issue an individual Section 404 permit.
- A6. This Order does not exempt, and is provisional upon, compliance with other statutes and codes administered by federal, state, and local agencies.
- A7. 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.
- A8. 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.
- A9. 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.

- A10. 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.
- A11. 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.
- A12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

B. Water Quality Conditions:

- B1. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-200 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize a temporary turbidity exceedance beyond the limits established in WAC 173-201A-200(1)(e)(i). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup or surface waters or sediments occurring as a result of project construction or operations.
- B2. Turbidity shall be visually assessed and recorded at a minimum of every four (4) hours during periods of active in-water work. Monitoring points shall be at the point of compliance as specified in WAC 173-201A-200(1)(e)(i), which allows a 300-foot temporary mixing zone for turbidity resulting from disturbance of in-place sediments in the Snohomish River, outside the area of influence of the inwater work, and at the discharge point. A turbidimeter is recommended, however, visual gauging of turbidity is acceptable. Visible project-related turbidity at 300 feet from the discharge point is considered to be an exceedance of the standard. If an exceedance of 5NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a ten (10) percent increase in turbidity when the background turbidity is more than 50 NTU, occurs at 300 feet from the project site, modify the activity causing the problem and continue to monitor every four (4) hours. If exceedances occur with two (2)

consecutive measurements (four (4) hours apart), stop the activity causing the turbidity until the problem is resolved.

C. Conditions for In-Water and Over-Water Construction Activities:

General Conditions:

- C1. 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.
- C2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- C3. 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.
- C4. 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.
- C5. 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.
- C6. No sawing, cutting, or other treatment of dock timbers shall be conducted seaward of the ordinary high water mark (OHWM).
- C7. Orange barrier fencing shall be installed prior to construction to demark the construction area and ensure that streams and wetlands are not impacted.
- C8. 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.
- C9. No heavy equipment or construction materials shall be parked or stored on the beach, or seaward of the OHWM.
- C10. Project activities shall be conducted to minimize siltation of the beach area and bed.

- C11. If a barge is used, the Applicant shall operate the barge(s) and tug in deep water so as to minimize nearshore propeller wash impacts such as suspension of nearshore sediments.
- C12. Excavated materials containing silt, clay, or other fine grained soil shall not be stockpiled below the OHWM.
- C13. Excavated or stockpiled material shall be removed from the bed or bank within 72 hours of ramp construction. Upon removal the excavated material, the bed and bank shall be returned to the preproject natural grade within 72 hours.
- C14. Use of equipment on the beach shall be held to a minimum, confined to a single access point, and limited to the footprint of the kayak ramp plus a maximum 6-foot work fringe around the mattress to define the work corridor. Construction materials shall not touch the bed outside this work corridor. The boundary of the work area shall be delineated and contained within a silt curtain or other BMP that will retain suspended sediments.

Pile Driving:

- C15. All new pilings shall be steel.
- C16. The 8-inch-diameter steel piling at the Ebey Island site shall be driven by an impact hammer in the dry.
- C17. The 12-inch steel pilings shall be installed at the Ebey Island site using a vibratory pile driving device or a drop hammer pile driver.
- C18. The Applicant shall employ a bubble curtain during installation of steel piles greater than 10 inches in diameter when using an impact hammer. The bubble curtain shall be deployed in a manner to ensure that bubbles completely engulf the piles during the impact driving. A block of wood at least six (6) inches thick shall be placed between the pile driver and the pile to minimize in-water noise. The piles may be driven without a bubble curtain, provided either a diver or a Washington Department of Fish and Wildlife Area Habitat Biologist is on site or on the barge during driving. If any fish are seen to be in distress, work shall immediately cease and a bubble curtain shall be deployed before the driving is completed.

D. Project Mitigation:

- D1. Impacts to aquatic resources shall be mitigated through measures described in the following documents, except as modified by this Order:
 - October 11, 2006, amendment to the Critical Area Study and Habitat Management Plan;

- Sheet 5 of the February 2006 Spencer Island plan set; and
 - The October 2006 Ebey Island plan set.
- D2. In addition to conditions in the above-referenced documents, the following requirements shall be conditions of this Order:
- a. Timing: Restoration at the Spencer Island Launch Site will occur immediately after project completion or at the earliest planting season following project completion.
 - b. Baseline Monitoring Report: A baseline monitoring report documenting the final design of the mitigation area must be prepared when site construction and planting are completed. The report shall include the following:
 - i. Vicinity map showing site access.
 - ii. Drawings that clearly identify in plan view the location of the planted area.
 - iii. The installed planting scheme showing approximate locations of plants and the time of planting.
 - iv. Photographs of the area taken from permanent reference points.
 - v. Locations of photopoints, and sampling sites.
 - vi. A description of any changes to the mitigation plan that occurred during construction.

A copy of the baseline monitoring report shall be sent to Paul Anderson, Wetland Specialist at Ecology, 3190 160th Avenue SE, Bellevue, WA 98008-5452, within 60 days of completing construction, and in no case later than November 30, 2007.

- c. Monitoring: Monitoring of vegetation shall be done every year after the initial planting for a minimum of five (5) years, with monitoring reports submitted to Ecology annually. If performance standards are not met in Year 5, additional monitoring will be conducted in Year 7. If performance standards are not met in Year 7, additional monitoring will be conducted in Year 10. Monitoring shall include representative photos taken from permanent locations and measures of vegetation cover as described in the *Snohomish River Estuary Water Trail Kayak Launch Sites Critical Areas Study and Habitat Management Plan* (received August 24, 2005). The mortality of all planted woody species shall be recorded either by collecting data on each of the individual plantings or by a statistically sound sampling. **All monitoring reports shall be submitted to Paul Anderson, Wetland Specialist at Ecology, 3190 160th Avenue SE, Bellevue, WA 98008-5452.** Reports shall display the Order #4051, and Corps Reference #200500376.

- d. Performance Standards: Plants shall be maintained or replaced as needed to ensure a minimum 80% survival of planted native woody species at Year 1, a minimum increase of 10% areal cover in Year 3 and 4, and 85% areal cover of all planted trees and shrubs for Year 5 after planting. If a minimum 85% areal cover of all planted trees and shrubs is not achieved in Year 5, monitoring, and replanting if necessary, will continue in Year 7, and if needed in Year 10. Areal cover of invasive non-native species on the site shall be less than 20% by Year 4 and thereafter during the monitoring period.
- e. Maintenance: The Applicant is responsible for maintenance and protection of the native vegetation planting area both throughout and after the monitoring period. This includes 100% replacement of woody plants that die during the first year after planting and subsequent replacement sufficient to ensure an 85% areal cover at the end of five (5) years. Maintenance shall also ensure that areal cover of invasive non-native species on the site shall be less than 20% after Year 4 of the monitoring period. If adverse site conditions or unforeseen problems cause plantings to grow poorly or die at a high rate, the Applicant shall analyze the cause and take corrective action such as irrigating, protecting trunks from gnawing rodents, etc.

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 is valid until all compliance requirements in this document have been met.
- F2. In-water work shall be subject to timing limitations imposed by WDFW. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

G. Reporting and Notification Requirement Conditions

- G1. 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 #200500376, Order #4051 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

H. Appeal Process

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

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

In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

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

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 February 16, 2007 at Bellevue, Washington.



Geoff Tallent, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

**SNOHOMISH COUNTY PARKS AND RECREATION
CANOE AND KAYAK LAUNCH FACILITIES PROJECT
Water Quality Certification Order #4051**

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

I have read and understand the conditions of Order #4051 Section 401 Water Quality Certification for the Snohomish County Parks and Recreation Canoe and Kayak Launch Facilities Project. I have also read and understand all permits, plans, documents, and approvals associated with the Snohomish County Parks and Recreation Canoe and Kayak Launch Facilities Project referenced in this order.

Signature

Date

Title

Company