



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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March 1, 2006

REGISTERED MAIL

Ellie Ziegler
Washington State Department of Transportation/ Washington State Ferries
2901 Third Avenue
Seattle, WA 98121-1081

RE: Water Quality Certification Order No. 3121 (Corps Public Notice No. 200501182) for widening the trestle at the Bainbridge Island Ferry Terminal in the City of Bainbridge Island, Kitsap County, Washington

Dear Ms. Ziegler:

On October 13, 2005 the Washington State Department of Transportation/ Washington State Ferries, 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 Bainbridge Island Ferry Terminal Trestle Widening Project. The project proposes to widen the over water portion of the Bainbridge Island ferry terminal by adding about 400 feet in length and will vary in width from 43 to 166 feet and add a new concrete approach slab. Unavoidable impacts will be mitigated by restoration and enhancement of an existing freshwater wetland and buffer vegetation and the restoration of a gravel beach and backshore. U.S. Army Corps of Engineers issued a public notice on January 27, 2006 for the proposed 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. This letter also serves as the State response to the Corps of Engineers' January 27, 2006 Public Notice.



Ellie Ziegler
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If you have any questions, please contact Kerry Carroll, Ecology's Federal Project Coordinator for this project at 360-407-7503 or via e-mail at kstr461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



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

{bm}::{kc}
Enclosure

cc: Jack Kennedy – Corps of Engineers
Giselle Sassen – Anchor Environmental
Randi Thurston – WDFW

e-cc: Penny Keys – HQ
Loree' Randall – HQ
Betty Renkor – SEA
Bob Penhale – WQ

IN THE MATTER OF GRANTING A) ORDER # 3121
WATER QUALITY) Corps Reference No. 200501182
CERTIFICATION TO) Bainbridge Island Ferry Terminal Trestle
Washington State Department of) Widening and Irene Mitigation Site Project in
Transportation/ Washington State) Eagle Harbor located in Kitsap County,
Ferries) 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: Washington State Department of Transportation/ Washington State Ferries
Attn: Ellie Ziegler
2901 Third Avenue
Seattle, WA 98121-1081

On October 13, 2005 Washington State Department of Transportation/Washington State Ferries submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice for a proposed water quality certification was distributed by the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on January 27, 2006.

The proposed project is located in WRIA 15 on Bainbridge Island, Section 26, Township 25N, Range 2E, in Kitsap County. The project entails widening the over water portion of the Bainbridge Island ferry terminal by adding about 400 feet in length and will vary in width from 43 to 166 feet. This is an addition of approximately 29,950 square feet to the over water dock and approximately 9,280 square feet landward of mean higher high water, including a new concrete approach slab. Unavoidable impacts will be mitigated by restoration and enhancement of an existing freshwater wetland and buffer vegetation and the restoration of a gravel beach and backshore.

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. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 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:

1. For purposes of this Order, the term "Applicant" shall mean Washington State Department of Transportation/Washington State Ferries (WSDOT/Ferries), and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's HQ, Attn: Federal Project Coordinator (WSDOT), P.O. Box 47600, WA 98504-7600 or via e-mail (preferred), if possible, to the Coordinator assigned to this project. Notifications shall be made via phone and/or e-mail (preferred). All submittals and notifications shall be identified with Order No. 3121 and include the Applicant's name, project name, project location, and the project contact and the contact's phone number
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on October 13, 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.
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. This Order shall be rescinded if the Army Corps of Engineers (Corps) does not issue an individual 404 permit.
6. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
7. 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.
8. 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.
9. 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.
10. The Applicant shall ensure that all appropriate Supervisors, Project Engineer(s), Contractor(s) and Project Inspector(s) 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 to Ecology a signed statement from each Project Engineer, Contractor, Inspector and appropriate Supervisors that they have read and understand the conditions of this Order and the referenced permits, plans, documents and approvals. These statements shall be provided to Ecology on the form provided (attachment A) before construction begins at the project site. The Applicant shall also provide a signed statement to Ecology from each new Supervisor, Project Engineer, Contractor or Inspector hired or assigned after the project begins within seven (7) days of hiring.
11. 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.
12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation for each day of continuing noncompliance.

B. Water Quality and Monitoring

1. Eagle Harbor is a Class "A" water of the state. Water quality criteria contained in 173-201A-030(1) WAC and 173-201A-040 WAC shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedence of water quality standards beyond the limits established in 173-201A-110(3).
 - a. The point of compliance for turbidity when working in marine waters shall be at a radius of one hundred fifty feet (173-201A-110(3)(d) WAC from the activity causing the turbidity exceedence. The mixing zone is not granted for any other parameter other than turbidity and is only authorized after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedence of the turbidity criteria.
2. This reach of Eagle Harbor has been identified on the current 303 (d) list as exceeding state water quality standards for Benzo(a)anthracene, Benzo(a)pyrene, Benzo(b)fluoranthene, Chrysene, Dibenzo(a,h)anthracene, Indino(1,2,3-cd)pyrene and total polychlorinated biphenyls (PCB's). This proposed project shall not result in further exceedence of these standards.
3. The Applicant shall submit a Water Quality Monitoring and Protection Plan (Plan) to the Federal Project Coordinator at least 20 days prior to beginning construction, for review and approval. Activities that are required to be monitored are not authorized to be conducted until approval is received.
 - a. The Plan shall include the name(s) and phone number(s) of the Pollution Control inspector and the person responsible for onsite monitoring and reporting.
 - b. Prepare and submit a map as part of the Plan with numbered or named sampling locations associated with the in-water activities indicated in the table below.
 - c. Identify at least two (2) sample locations for each activity, one at background and one at the point of compliance from each activity identified in the Water Quality Monitoring Table.
 - d. The Plan shall also include a description of the Best Management Practices (BMP's) that will be used on the project to protect water quality, including a description of procedures for concrete pouring and pile driving activities.
4. Any changes to the Plan must be approved in writing by Ecology.

5. Monitoring of this project shall be done for the following in-water or over-water activities as described below in the Water Quality Monitoring Table. Pile driving and/or pile removal activities done at low tide while no water is present, does not require in-water monitoring.

Water Quality Monitoring Table

Activity	Parameter	Location	Frequency	Sample Type	WQ Standard
(1) Concrete Pouring	pH	pour site and *background	Every 2 hrs during activity	Water	pH: 7.0-8.5 with a human caused variation of less than 0.5 units
(2) Pile Removal	Turbidity	150 ft. radius from activity and *background	Every 2 hrs during activity	Water	5 NTU over **background
(3) Pile Driving	Turbidity	pile driving site and *background (If there is a visible turbidity plume present that goes beyond 50 ft. from the pile driving site, water sampling shall be initiated)	*Continuous	***Visual	5 NTU over **background
		150 ft. radius from activity and *background	Every 2 hrs during activity or until plume is no longer visible	Water	5 NTU over **background
(4) All Activities	Oil and Grease	Entire work site and *background	*Continuous	***Visual	Visible Sheen

- * Continuous sample frequency is defined as the entire duration of the activity
- ** Background is defined as the biological, chemical, and physical conditions of a waterbody, outside the area of influence of the discharge under consideration
- *** Visual sample type is defined as an observation

6. Monitoring results shall be recorded on the WSDOI required form, indicating the activity that prompted the monitoring and the locations monitored in the "notes" field of the form.
7. If the results of the monitoring show that the water quality standards are not being met, WSDOI/Ferries shall modify or stop the activity causing the problem and commence hourly monitoring until standards are met for two (2) consecutive sample periods.

8. A report summarizing the monitoring results shall be submitted weekly to Ecology's Federal Project Coordinator for this project, per condition A.2.
9. All monitoring results shall be kept onsite and submitted to Ecology upon request.
10. Mitigation and/or additional monitoring may be required if water quality standards or performance standards are not met.

C. Stormwater

1. Erosion control devices (e.g., filter fences, hay bales, etc.) suitable to prevent exceedence of state water quality standards shall be in place before starting upland project construction and shall be maintained throughout construction.
2. Periodic inspection and maintenance of all erosion control structures shall be conducted no less than every seven (7) days from the start of the project to site stabilization. Additional inspections shall be conducted prior to and after expected rainfall events to ensure erosion control measures are in working conditions. Any damaged structures shall be immediately repaired. If it is determined at the inspection that additional measures are needed to control stormwater and erosion, they shall be implemented immediately.

D. Wetlands

1. Mitigation for this project shall be constructed and maintained as described in the "*Irene Mitigation Revised Mitigation Plan*" dated March 2005 and "*Final Addendum-Irene Mitigation Revised Mitigation Plan*", dated October 10, 2005
2. Any changes to the wetland mitigation plan as submitted with the JARPA, "*Irene Mitigation Revised Mitigation Plan*" dated March 2005 and "*Final Addendum-Irene Mitigation Revised Mitigation Plan*", dated October 10, 2005", must be approved in writing by Ecology prior to constructing the changes.

E. Construction Conditions

1. Work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.
2. The upland project clearing limits, travel corridors and stockpile sites shall be clearly marked/staked prior to construction. Sensitive areas to be protected from disturbance shall be delineated so as to be clearly visible to equipment operators. Equipment shall enter and operate only within the delineated clearing limits, corridors and stockpile areas.

3. Machinery and equipment used during construction shall be serviced, fueled, and maintained in a manner to prevent contamination to surface waters.
4. All fueling areas shall be provided with adequate spill containment.
5. 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.
6. A separate area shall be set aside, which does not have any possibility of draining to surface waters, for the wash-out of concrete delivery trucks, pumping equipment and the wash down of equipment and tools.
7. Dewatering water that is not turbid or has a pH between 7.0-8.5 may be discharged directly to Eagle Harbor provided that: a) waste water containing raw concrete or other harmful material has not been in contact with the water to be dewatered and b) the water will meet all other water quality standards at the point of discharge.
8. Concrete process water shall not enter waters of the state. All concrete shall be completely cured prior to coming into contact with state waters. Any contact water discharged from a confined area with curing concrete shall be routed to upland areas to be treated and infiltrated, or disposed of appropriately with no possible entry to state waters.
9. A floating surface boom shall be installed around the project area to capture floating surface debris.
10. All construction debris, excess sediment and other waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
11. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state, including wetlands. If a staging area must be located within 50 feet of a water of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology before construction begins.

F. Timing Requirements

1. This Order is valid until all requirements in this document have been met.

2. In-water work is subject to a fishery closure window determined by Washington Department of Fish and Wildlife's Hydraulic Project Approval (HPA). All in-water work shall be completed by the work window identified in the most current HPA issued for this project.

G. Notification Requirements

1. Notification shall be made for the following activities, per condition A.2:
 - a. at least ten (10) days prior to the pre-construction meeting,
 - b. at least seven (7) days prior to the onset of any work authorized by this Order,
 - c. within seven (7) days after the completion of the project
 - d. immediately following a violation, or potential to violate state water quality standards or any condition of this order.

H. Emergency/Contingency Measures:

1. The Applicant shall develop a spill prevention and containment plan for this project and shall have spill cleanup materials available on site.
2. Any work that is out of compliance with the provisions of this Order, or producing 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.
 - 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 and, within the first hour of such conditions, make every effort to have the water samples analyzed for dissolved oxygen and total sulfides. Ecology may require such sampling and analyses before allowing the work to resume.

- d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, 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. Immediately notify Ecology's Northwest Regional Spill Response Office at 425-649-7000, Department of Fish and Wildlife and Ecology's Federal Project Coordinator, per condition A.2, of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.
3. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify the Ecology's Northwest Regional Spill Response Office at 425-649-7000.
 4. A full-time Pollution Control inspector shall be on-site at all times while construction activities are occurring that need monitoring or involve working in environmentally sensitive areas and on-call and readily accessible to the site during all other periods of construction activities

I. 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:

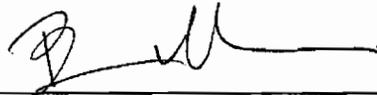
The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608

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 Mar 1, 2006 at Olympia, Washington.



Brenden McFarland, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington