



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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REGISTERED MAIL

April 21, 2006

Ms. Margaret Schwertner
Port of Anacortes
P.O. Box 297
Anacortes WA 99221-0297

RE: Water Quality Certification - Order #3246/Corps Public Notice 200501451 -
Rehabilitation of an existing waterfront industrial area and upgrade of facilities by removing
existing structures, reconfiguring an existing basin, and installing new overwater and upland
structures in Guemes Channel near Anacortes, Skagit County, Washington

Dear Ms. Schwertner:

The above-referenced public notice for proposed work in waters of the state has been reviewed
in accordance with all pertinent rules and regulations. On behalf of the State of Washington, we
certify that the work proposed in the public notice complies with applicable provisions of
Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate
requirements of State law. This letter also serves as the State response to the Corps of Engineers.

Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended,
Ecology concurs with the Applicant's determination that this work is consistent with the
approved Washington State Coastal Zone Management Program.

This certification is subject to the conditions contained in the enclosed Order and may be
appealed by following the procedures described in the Order. If you have any questions
concerning the content of the Order, please contact Helen Pressley at (360) 407-6076.

Sincerely,

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

cc: Randel Perry, Corps
Penny Keys, Ecology



IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Port of Anacortes in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC) ORDER # 3246) Corps Reference No. 200501451) Rehabilitation of an existing waterfront industrial) area and an upgrade to existing facilities by) removing existing structures, reconfiguring an) existing basin, and installing new overwater and) upland structures in Guemes Channel,) Anacortes, Skagit County, Washington
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TO: Ms. Margaret Schwertner
Port of Anacortes
P.O. Box 297
Anacortes WA 98221

On December 20, 2005 the Port of Anacortes submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A 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 March 2, 2006.

The applicant proposes to rehabilitate an existing waterfront industrial area and upgrade facilities by removing existing structures, reconfiguring an existing basin, and installing new overwater and upland structures. The purpose of this work is to upgrade an industrial facility to meet current market demands and ensure operational safety. These proposed actions are part of facility improvements at the Dakota Creek Industries (DCI) site, a commercial ship repair facility. Work involves removal of 2 existing docks, piling, marine railways, and associated overwater and upland structures; installation of 3 new piers with associated overwater and upland structures; dredging of 168,000 cubic yards (cy) of material and installation of 670 linear feet of sheetpile bulkhead to reconfigure the existing DCI ship basin; and installation of 250 linear feet of riprap along the east boundary of the basin.

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, 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), 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 Port of Anacortes, 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 to the Federal Permit Coordinator, PO Box 47600, Olympia WA 98504. Any submittals shall reference Order No. 3246 and Corps No. 200501451.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on December 20, 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 does not issue an individual 404 water quality 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 project manager, construction managers and lead workers, and state and local government inspectors.

8. The Applicant shall provide access to the project site and the mitigation 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.
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, erosion, etc.), or if additional conditions are necessary to further protect water quality.
10. 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.
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:

1. No Further Impairment of Existing Water Quality.

Guemes Channel, (WRIA 3, WA-PS-0200) is a Class AA water of the state. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project.

This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve the Port of Anacortes from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

2. Guemes Channel has been identified on the current 303(d) list of impaired water bodies as exceeding water quality standards for PCB 1254. This proposed project shall not result in a further exceedance of this standard, and will be out of compliance with this

certification if discharges from the project exceed limits for those contaminants identified in 173-201A-030(1) WAC and/or 173-201A-040 WAC.

C. Dredging and Disposal:

1. All dredging is to be done using a clamshell dredge. Use of any other type of dredge will require prior approval from the DMMP agencies.
2. Up to 168,000 cy of dredged material will be excavated for this project. The PSDDA (Puget Sound Dredge Disposal Analysis) agencies have determined that 156,500 cy of this material is suitable for unconfined disposal at the PSDDA nondispersive (or dispersive) open-water disposal site in Rosario Straits. The remaining 11,500 cy were found unsuitable for open-water disposal and will be loaded onto trucks and transported to an approved upland disposal site.
3. All debris (larger than 2 feet in any dimension) shall be removed from the dredged sediment prior to disposal. Similar sized debris found floating in the dredging or disposal area shall also be removed. All debris shall be disposed of at an appropriate upland location.
4. A **Dredging Plan** is required and shall be made available for review and approval at the pre-dredge meeting to be convened at the Seattle Corps of Engineers office prior to the start of dredging. One week prior to the pre-construction meeting, a copy of the plan shall be sent to the Federal Permit Coordinator, Department of Ecology, PO Box 47600, Olympia WA 98504-7600 for review prior to the meeting.

D. Construction and Demolition:

1. Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (e.g. filter fences, silt curtains, etc.), shall be in place before starting work at the impact site. BMPs shall be maintained throughout construction.
2. All construction debris shall be properly disposed of on land so that it cannot enter the waterway or cause water quality degradation to state waters.
3. All excess excavated upland material shall be disposed of above the 100-year floodplain and shall be contained so as to prevent its re-entry into waters of the state.
4. Erosion control devices (e.g., filter fences, silt or bubble curtains, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting project construction and shall be maintained throughout construction.
5. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters except as authorized by an NPDES or state waste discharge permit.

6. Piling Removal and Placement:

- a. During piling removal a containment boom and absorbent pads shall be placed around the perimeter of the work area to capture wood debris and other materials released into the waters as piling are pulled. All accumulated debris shall be collected and disposed of upland at an approved disposal site.
- b. During inwater work the Applicant shall have a boat available on site at all times to retrieve debris from the water.
- c. Piles removed from substrate shall be removed immediately from the water into a barge lined with filter fabric or straw bales around the perimeter or upland into an area that is similarly contained. The pile shall not be shaken, hosed-off, left hanging to drip or any other action intended to clean or remove adhering material from the pile.
- d. All existing creosote treated pilings shall be completely extracted, removed from marine waters, and disposed of at an approved upland disposal site. If the pilings are cannot be completely removed they shall be cut off at a minimum of three (3) feet below grade as required by the Washington Department of Fish and Wildlife Hydraulic Project Approval. The hole then shall be capped with clean sand.
- e. All new pilings shall be steel with the exception of timber fender piles.
- f. The Applicant shall employ a bubble curtain or equivalent Best Management Practice around steel piles 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.

E. Monitoring:

1. During and immediately after project completion, the Applicant or contractor shall visually monitor the area for distressed or dying fish. If water quality exceedances are observed outside the dilution zone, in-water work shall cease immediately and the Applicant or the contractor shall contact Ecology at Ecology's Northwest Regional Spill Response Office at (425) 649-7000, a 24-hour number.

F. Mitigation:

1. Impacts to aquatic resources shall be mitigated by providing a total of 3.36 acres of eelgrass and non-eelgrass habitat within the intertidal and shallow subtidal zone, through excavation at the Log Pocket and O Avenue Mitigation Sites, and restoring 2.3 acres of eelgrass habitat at the Fidalgo Bay Habitat Site, as described in the following documents, except as modified by this Certification and Order:

- Port of Anacortes - Project Pier 1 Mitigation Plan, prepared by Grette Associates Environmental Consultants, November 18, 2005; including 16 sheets of drawings.
2. In addition to mitigation measures described in the above-referenced documents, the following requirements shall be conditions of this Order:
- Timing: The compensatory mitigation plan shall be implemented prior to or concurrently with the site construction for the development.
 - Record Report and Drawings: A report documenting the final design of the mitigation measures shall be prepared when site construction and planting is completed. The report shall include the following:
 - Vicinity map;
 - Project documentation, including drawings, photographs, surveys, etc.; and
 - An analysis of any changes to the mitigation plan that occurred during construction.

A copy of the Record Report shall be sent to Helen Pressley at Ecology within six months of completing construction at the Log Pocket and O Avenue Mitigation Sites. The project monitoring period shall commence with Ecology's acceptance of the Record Report.

- Performance Standards: The project performance standards shall be as listed in Table 6, Section 7.2, Project Pier 1 Mitigation Plan. These include:
 - Convert 1.00 acres of upland into aquatic habitat below elevation +8.2 feet MLLW at the Log Pocket Mitigation Site.
 - Convert 0.06 acres of upland into aquatic habitat below the elevation +8.2 feet MLLW at the O Avenue Mitigation Site.
 - Observe use by juvenile salmonids as evidenced by beach seine sampling at Log Pocket and O Avenue Mitigation Sites.
 - Provide approximately 140,000 eelgrass turions at Fidalgo Bay Habitat Site.
- Monitoring: Monitoring to insure that the project performance standards are met shall be performed as described Section 7.3, Monitoring Activities, in the Project Pier 1 Mitigation Plan. Monitoring shall take place over a period of six years for the Log Pocket and O Avenue Mitigation Sites, with monitoring performed in years 1, 2, 4 and 6. Monitoring at the Fidalgo Bay Habitat Site shall take place for ten years, with monitoring performed in years 2, 3, 6 and 10. **Copies of all monitoring reports shall be submitted to Ecology at PO Box 47600, Olympia, WA 98504, as well as to the U.S. Army Corps of Engineers.**

- Contingency Plans: The applicant is responsible for ensuring that the mitigation sites meet their performance standards. The contingency planning process for this project is explained in Section 7.4, Project Pier 1 Mitigation Plan.
- Permanent Protection: The applicant shall provide documentation showing the means of long-term protection for the Log Pocket and O Avenue Mitigation Sites, as described in Section 6.6.3, Project Pier 1 Mitigation Plan, to Helen Pressley at Ecology within 60 days of completing construction, and in no case later than December 31, 2008. It is understood that the Fidalgo Bay Habitat Site would be sub-leased by the Port from the City of Anacortes, which would lease it from the State Department of Natural Resources. There is no long-term guarantee that the Fidalgo Bay Habitat Site will not be subject to future development actions, although it would be subject to protective regulations in place at the time of any proposed development.

F. Emergency and Contingency Measures:

1. Any in-water work that is out of compliance with the provisions of this Order, 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 operator 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 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.
2. Spills into state waters, spills onto land with a potential for entry into state waters, or other significant water quality impacts, shall be reported immediately to Ecology's Northwest Regional Spill Response Office at (425) 649-7000, a 24-hour number.
3. 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, including wetlands.

G. Timing Requirements:

1. In-water work is subject to a fishery closure window described in Washington State Department of Fish and Wildlife's (WDFW) Hydraulic Project Approval (HPA) #104269-1 dated March 3, 2006. All in-water work shall be completed by the work window identified in the most current HPA issued for this project. Any project change that requires a new or revised HPA should also be sent to Ecology for review.

2. This Order shall remain in effect for a period of five (5) years from date of issuance. Continuing this project beyond the five year term of this Order will require separate certifications every five years.

H. Notification Requirements:

1. **The department shall be notified at least 72 hours prior to the start of dredging.** Contact Helen Pressley at Department of Ecology, PO Box 47600, Olympia WA 98504-7600, (360) 407-6076, or hpre461@ecy.wa.gov.

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 April 21, 2006 at Lacey, Washington.



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

Attachment #A

Water Quality Certification Statement of Understanding

I, _____, state that, as an agent or contractor for construction and/or dredging at the Port of Anacortes, Pier 1/DCI Redevelopment, located between O Ave and T Ave north of 4th St, Anacortes, Skagit County, Washington. I have read and understand the relevant conditions of Washington State Department of Ecology Water Quality Certification Order #3247 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Company