



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

October 3, 2007

**REGISTERED MAIL**  
**RB 670 439 271 US**

Michael Shaw  
City of Mountlake Terrace  
23204 58<sup>th</sup> Avenue West  
Mountlake Terrace, WA 98043

RE: Water Quality Certification Order #5120 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers (Corps) Reference #200501470, City of Mountlake Terrace, Snohomish County, Washington.

Dear Mr. Shaw:

On January 12, 2006, the City of Mountlake Terrace submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. On December 28, 2006, a request to withdraw and re-apply for a Certification was submitted with no additional changes to the originally proposed project. 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 April 23, 2007.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the original JARPA submitted on January 12, 2006 and in the JARPA re-application form submitted on December 28, 2006, and in the public notice (April 23, 2007) 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.

On April 27, 2007, Ecology received a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP) form from the City of Mountlake Terrace for this project. Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the City of Mountlake Terrace's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon the City of Mountlake Terrace's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.



Michael Shaw  
October 3, 2007  
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If you have any questions, please contact Cynthia Walcker, Federal Permit Coordinator at (425) 649-4318 or [cynt461@ecy.wa.gov](mailto:cynt461@ecy.wa.gov). 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 stylized flourish at the end.

Geoff Tallent  
Northwest Regional Office  
Shorelands and Environmental Assistance Program

GT:csw:cja

Enclosure

cc: Susan Glenn, U.S. Army Corps of Engineers  
Dustin Hinson

e-cc: Penny Keys – Ecology, HQ  
Loree' Randall – Ecology, HQ  
Erik Stockdale, Ecology, NWRO

<p><b>IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO the City of Mountlake Terrace</b> in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC</p>	<p>) <b>ORDER # 5120</b> ) <b>Corps Reference No. 200501470</b> ) Relocate Lyon Creek 25 Feet East of its Existing ) Location While Meandering a Previously ) Straightened 175 Foot Stretch of the Creek ) Resulting in 0.1 Acre of Wetland Fill. Add a ) Rock Toe Along 65-Feet of the West Bank. ) Located in the City of Mountlake Terrace, ) Snohomish County, Washington.</p>
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TO: Michael Shaw  
City of Mountlake Terrace  
23204 58<sup>th</sup> Avenue West  
Mountlake Terrace, WA 98043

On January 12, 2006 the Washington State Department of Ecology (Ecology) received a Joint Aquatic Resources Permit Application (JARPA) from the City of Mountlake Terrace requesting a Section 401 Water Quality Certification (Certification). On December 28, 2006, a request to withdraw and re-apply for a Certification was submitted in order to extend the review period for this project, with no additional changes to the JARPA. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on April 23, 2007.

The project proposes to fill an existing section of Lyon Creek and relocate it 25 feet to the east. The new channel will begin south of an existing culvert on Mr. Chris Weber's property at 24323 Cedar Way and extend 75-feet north of an existing box culvert crossing at Cedar Way. Additionally, a 175-foot straightened stretch of the creek will be meandered. Also, 65-feet of the west bank will be fortified with a rock toe and buried under soil. LWD in the form of rootwads will be installed at ten locations. The work area and new creek bank will be replanted with native vegetation. As a result of relocating Lyon Creek, 0.1 acres of wetland fill will occur. The project is located between 24323 and 24331 Cedar Way, Mountlake Terrace, Snohomish County, Washington 98043. Section 34, Township 27 North, Range 4 East, WRIA# 8, Cedar-Sammamish Watershed.

**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**

1. For purposes of this Order, the term "Applicant" shall mean the City of Mountlake Terrace and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to the Washington State Department of Ecology, Northwest Regional Office, Attn: 401/CZM Federal Permit Coordinator, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order No. 5120 and Corps No. 200501470.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on January 12, 2006 and in the re-application form received on December 28, 2006. 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 does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
6. 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.

7. 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.
8. 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.
9. 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.
10. 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.
11. 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. Construction Conditions**

1. All work in and near the water shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMP's) suitable to prevent exceedances of state water quality standards shall be in place before starting clearing, filling and grading work and shall be maintained throughout construction.
2. The project shall be clearly marked/staked prior to construction. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Sensitive areas and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. Equipment shall enter and operate within the marked clearing limits corridors and stockpile areas.

#### **C. Wetland Mitigation and Monitoring**

1. Impacts to aquatic resources shall be mitigated through measures described in the *Lyon Creek Relocation and Enhancement Project Biological Evaluation and Essential Fish Habitat Assessment* (Biological Evaluation) prepared by Steward and Associates, December 2005, except as modified by this Order.
  - Restoration plantings shall follow the species and planting densities described in Appendix D of the Biological Evaluation and shown on the figure in Appendix D;

- Survival of restoration plantings will be at least 80 percent during and at the end of the monitoring period; and
  - Non-native vegetation (Himalayan blackberry, reed canarygrass, and Japanese knotweed) shall be controlled to the extent necessary to ensure survival of at least 80 percent of restoration plantings.
2. Monitoring of vegetation shall be done one year after the initial planting (Year 1) and at Year 3 and Year 5, with monitoring reports submitted to Ecology for each monitoring year. If 80 percent survival of restoration plantings is not met in Year 5, additional monitoring may be required in Year 7; and in Year 10 if 80 percent survival is not met in Year 7. The Ecology Wetland Specialist should be contacted within 30 days following submittal of the Year 5 monitoring report to discuss whether additional monitoring will be required if 80 percent survival of restoration plantings has not been achieved.

#### **D. Reporting Requirements**

1. As-built and monitoring reports describing the project status shall be submitted to Ecology. Both as-built and monitoring reports should include the project name; associated permit and reference number(s) (assigned by the Corps, Ecology, local government); who prepared the report (name, address, and phone number); who the report was prepared for (name, address, and phone number); and date of the report.
2. A detailed as-built report shall be prepared after mitigation construction showing any variances from the final wetland mitigation plan. The "as-built" shall be the baseline document used for all future monitoring of the mitigation project. It shall include but not be limited to:
  - Name and contact information for the parties responsible for the mitigation site including the applicant, landowner, and wetland professional on site during construction.
  - Date the construction started and ended and when the grading and planting were completed.
  - Final site topography.
  - Photographs of the site at as-built conditions taken from permanent photographic record stations (photo pans are required in addition to along transect lines).
  - Installed planting scheme with quantities, densities, sizes and approximate locations.
  - Types of habitat features and their locations.
  - Summary of any problems encountered and alterations made to mitigation plan, including brief statement of reasons for changes, during construction of the mitigation site.
  - List of any follow-up actions needed with a schedule.
  - Copies of any records of long-term protection (e.g., conservation easement, deed notification) for the site.

Two (2) copies of the as-built report and drawings shall be sent to the Washington State Department of Ecology, Northwest Regional Office, Attn: 401/CZM Federal Permit

Coordinator, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452, within 60 days of completing construction and planting.

3. Monitoring reports shall be submitted following the schedule described in C.2. above and should include the following information:
  - Who completed the monitoring activities (name, address, and phone number).
  - Time period for which the monitoring activities occurred.
  - Photographic record of the site from the most recent monitoring visit at record stations (photo pans are required in addition to along transect lines).
  - Summary of monitoring results and field data collected to determine compliance with performance standards.
  - Table of monitoring results compared to performance standards for specified target dates.
  - Summary of management actions (maintenance and contingencies) implemented at the mitigation site(s).
  - Summary of any problems or significant events that occurred on the site that may affect the ultimate success of the mitigation project.

All monitoring reports shall be submitted to Ecology's 401/CZM Federal Permit Coordinator, Northwest Regional Office, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452, within 60 days of completing site monitoring for each monitoring year.

#### **E. Timing Requirements**

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

#### **F. Notification Requirements**

1. The Applicant shall provide written notification (FAX: 425-649-7098, e-mail: [cynt461@ecy.wa.gov](mailto:cynt461@ecy.wa.gov)) or mail to Ecology's 401/CZM Federal Permit Coordinator, Northwest Regional Office, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452, in writing at least three (3) days prior to the start of construction at the project site.
2. The Applicant shall provide written notification to Ecology's Northwest Regional Office Federal Permit Coordinator in writing within fourteen (14) days after completion of construction.

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

#### **G. Emergency/Contingency Measures**

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. 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, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:

- a. Cease operations that are causing the compliance problem.
  - 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 analyses of these samples 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 24-Hour Spill Response Team at 1-800-258- 5990 of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.
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.
  4. 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 Ecology's 24-Hour Spill Response Team at 1-800-258-5990.

## **H. Appeal Process**

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

The Pollution Control Hearings Board  
P.O. Box 40903  
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

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:

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

OR

Deliver your appeal in person to:

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

**3. And send a copy of your appeal to:**

Cynthia Walcker, Federal Permit Coordinator 401/CZM  
Department of Ecology  
Northwest Regional Office  
3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008-5452

*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 October 3, 2007 at Bellevue, Washington.



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