



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

June 28, 2005

REGISTERED MAIL
RB 336 144 282 US

U.S. Army Corps of Engineers
Seattle District
Attn: Victoria Luiting, PM-PL-ER
P.O. Box 3755
Seattle, WA 98124

REGISTERED MAIL
RB 336 144 194 US

Kitsap County
Attn: Monica Daniels
Department of Community Development
614 Division Street MS-36
Port Orchard, WA 98366

Dear Ms. Luiting and Ms. Daniels:

RE: **Order #2512**
U.S. Army Corps Reference No. CENWS-PL-05-02
Water Quality Certification/Coastal Zone Consistency Determination for U.S.
Army Corps of Engineers and Kitsap County, Carpenter Creek Estuarine Habitat
Restoration Project, Carpenter Creek Estuary, Kitsap County, Washington

The request for certification for proposed work in and adjacent to Carpenter Creek Estuary has been reviewed. On behalf of the state of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply 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 16 U.S.C. 1456 et. seq. (Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended), the Department of Ecology (Ecology) concurs with the applicant's determination that this work will be consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicant's

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compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Rebekah Padgett at (425) 649-7129. Written comments can be sent to Rebekah at the Department of Ecology, 3190 160th Avenue SE, Bellevue, WA 98008, or at rp461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in cursive script, reading "Jeannie Summerhays".

Jeannie Summerhays
Section Manager
Shorelands and Environmental Assistance Program

JS:RP:dh

Enclosure

cc: Penny Keys, Ecology

IN THE MATTER OF GRANTING A) ORDER # 2512
WATER QUALITY) Corps Reference No. CENWS-PL-05-02
CERTIFICATION TO) Replace two undersized culverts with bridges to
U.S. Army Corps of Engineers and) restore full tidal hydrology to approximately 33
Kitsap County) acres of subtidal and intertidal habitat, Carpenter
in accordance with 33 U.S.C. 1341) Creek Estuary, Kingston, located in Sections 26
FWPCA § 401, RCW 90.48.120, RCW) and 35, T. 27N., R. 02E., Kitsap County,
90.48.260 and Chapter 173-201A WAC) Washington.

TO: U.S. Army Corps of Engineers
Seattle District
Attn: Victoria Luiting, PM-PL-ER
P.O. Box 3755
Seattle, WA 98124

Kitsap County
Attn: Monica Daniels, Department of Community Development
614 Division Street MS-36
Port Orchard, WA 98366

On January 14, 2005, a public notice for a proposed water quality certification from the State of Washington was distributed for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401). The proposed project consists of: replacement of the 10-foot by 10-foot box culvert at South Kingston Road with a 95-foot single span bridge; filling of scour holes adjacent to South Kingston Road with approximately 2,655 cubic yards of imported material; replacement of the 5-foot-diameter culvert at West Kingston Road with a 60-foot single span bridge; excavation of approximately 1,300 cubic yards of material along an abandoned road embankment adjacent to West Kingston Road; and planting of native riparian and salt marsh species in areas disturbed by construction.

AUTHORITIES:

For purposes of this Order, the term “Applicant” shall mean U.S. Army Corps of Engineers and Kitsap County and its agents, assigns, and contractors.

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, RCW 90.48.120, and RCW 90.48.260, the Department of Ecology (Ecology) has investigated 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 as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; 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.

CONDITIONS OF ORDER #2512 AND WATER QUALITY CERTIFICATION:

In view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.260, RCW 90.48.120, and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the following conditions:

A. No Impairment of Water Quality:

- A1. Carpenter Creek Estuary WRIA #15 is classified as Class AA waters of the state. 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-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. 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 Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

Carpenter Creek has been identified on the current 303(d) list as exceeding state water quality standards for dissolved oxygen, fecal coliform, and temperature. This proposed project shall not result in further exceedances of the standards.

B. Construction:

- B1. Construction Stormwater and Erosion Control: Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (e.g., detention areas, filter fences, etc.), shall be in place before starting clearing, filling, and grading work at the impact sites. No mixing zone exists for stormwater discharge; it must meet state water quality standards.
- B2. The Applicant shall take all necessary measures to minimize the alteration or disturbance of existing wetland and upland vegetation.

- B3. 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.
- B4. 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.
- B5. Clean Fill Criteria: Applicant shall ensure that fill placed for the proposed project does not contain toxic materials in toxic amounts.
- B6. Applicant shall comply with construction Best Management Practices as described in JARPA Attachment #2.
- B7. Construction site dewatering water is required to meet state surface water quality standards prior to discharge. No mixing zone shall apply to discharge of dewatering water.

C. Emergency/Contingency Measures:

- C1. In the event Applicant is unable to comply with any of the permit terms and conditions due to any cause, Applicant shall:

- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
- Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Rebekah Padgett at (425) 649-7129.
- Submit a detailed written report to Ecology within five days that describes the nature of the violation, 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 Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

- C2. 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. No refueling of equipment shall occur over, or within 50 feet of creeks or wetlands.

D. Notification

- D1. Applicant shall provide notice to Ecology's Rebekah Padgett at least 3 days prior to the start of placing fill in wetlands or other waters of the state, and within 14 days after completion of construction at each project site and mitigation site. Notification can take place by e-mail to rpad461@ecy.wa.gov, telephone to (425) 649-7129, fax to (425) 649-7098, or in writing.

E. General Conditions:

- E1. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
- E2. Applicant will be out of compliance with this certification if the project is constructed and/or operated in a manner not consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.
- E3. Applicant will be out of compliance with this certification and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the Public Notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.
- E4. This Order is valid for a period of not more than five years after the signature dated on the last page of this Order. The Applicant shall reapply with an updated application for certification if five years elapse between the date of the issuance of this Order and the beginning of construction and/or discharge.
- E5. 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 foremen, and state and local government inspectors. To avoid violations or non-compliance with this Order, Applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order, the NPDES permit if applicable, and any subsequent revision or Ecology-approved plans.
- E6. Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.

- E7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines 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 the public interest.
- E8. Liability: 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.

Appeal Process:

Any person aggrieved by Order #2512 may obtain review thereof by appeal. Pursuant to Chapter 43.21B. RCW, a person can appeal this order to the Pollution Control Hearings Board within 30 days of the date of receipt of this Order. Any such appeal must be sent to the Washington Pollution Control Hearings Board, PO Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, Attn: Loree' Randall, PO Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated 6/28/05 at Bellevue, Washington.



Jeannie Summerhays, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington