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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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TTY 711 or 800-833-6388 (for the speech or hearing impaired)

REGISTERED MAIL

July 29, 2005

Mr. Michael Shaw
Port of Tacoma
PO Box 1837
Tacoma WA 98401

RE: Water Quality Certification - Order #2523/Corps Public Notice 200500133 -
Placement of a total of up to 64,250 cubic yards (cy) of fill in the existing barge slip in
order to restore uplands to +19 feet Mean Lower Low Water (MLLW).

Dear Mr. Shaw:

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
Shorelands and Environmental Assistance Program

cc: Seattle Corps – Jessica Winkler
Penny Keys – Ecology HQ



**IN THE MATTER OF GRANTING
A WATER QUALITY
CERTIFICATION TO
The Port of Tacoma
in accordance with 33 U.S.C. 1341
FWPCA § 401, RCW 90.48.260
and WAC 173-201A**)
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**ORDER #2523
CORPS #200500133
Placement of up to 64,250 cy of clean
fill to bring the barge slip to +19
MLLW in Blair Waterway, tributary
to Commencement Bay, Pierce
County, Washington**

TO: Mr. Michael Shaw
Port of Tacoma
PO Box 1837
Tacoma WA 98401

A Public Notice for issuance of a water quality certification from the State of Washington has been distributed for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401). The proposed project involves placement of a total of up to 64,250 cubic yards (cy) of fill in the existing barge slip in order to restore uplands to +19 feet Mean Lower Low Water (MLLW). Up to 10,000 cy of coarse sand and gravel would be used to construct a berm across the barge slip opening and up to 50,000 cy of clean fill would be placed behind the berm concurrently with berm construction. An additional 3,500 cy of riprap would be placed along the newly formed 2H: 1V sideslopes between +11.8 ft and 0 ft MLLW. Up to 250 cy of select substrate (2.5 inch minus angular shoulder ballast) will be placed in the interstices of the riprap. A total of 2.42 acres of intertidal habitat would be converted to uplands as a result of this project.

The Port proposes to setback the existing US Army Corps of Engineers (Corps) levee along the eastern shoreline of the Puyallup River, upstream of the Gog-le-hi-te mitigation site in order to create additional intertidal habitat. A perimeter levee will be constructed encompassing the mitigation area. Phase 1 of the mitigation area would consist of construction of approximately 6.22 acres of aquatic habitat below elevation +13 ft MLLW. The existing upland would be excavated down to native material, removing any garbage remaining from when the site was used as a municipal landfill. Additional excavation to target elevations ranging from +5 to +13 ft MLLW would be completed prior to breaching levee to allow hydraulic connection to the Puyallup River. The area between +10 and +13 MLLW would be seeded with a mixture of freshwater marsh species and the upland areas would be planted with trees, shrubs, and ground cover. Of the 6.22 acres of aquatic habitat created in Phase 1, 4.84 acres would be assigned to the Blair Barge Slip Fill Project. The remaining 1.38 acres of habitat constructed in Phase 1 would be proposed for mitigation for the Blair Waterway Infrastructure Improvements Project (Corps reference # 200400818). There is currently no schedule for the implementation of the Phase 2 habitat action. A compacted soil berm would be constructed with on-site soil to separate Phase 1 from the Phase 2 habitat area.

AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, RCW 90.48.120, and RCW 90.48.260, 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, 302, 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.

WATER QUALITY CERTIFICATION CONDITIONS: In view of the foregoing and in accordance with 33 U.S.C. 1341, 90.48.260 RCW, 90.48.120 RCW, and Chapter 173-201A WAC, certification is granted to The Port of Tacoma (Applicant) subject to the following conditions:

1. No Further Impairment of Existing Water Quality.

- a) Blair Waterway, Commencement Bay, (WRIA 10) is a Class B water of the state. Certification of this proposal does not authorize the Port 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(2) 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 from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
- b) This segment of the Blair Waterway, Commencement Bay has been identified on the current 303(d) list of impaired water bodies for exceeding a number of water quality parameters. This proposed project shall not result in further exceedances of those listed standards, and will be out of compliance with this certification if discharges from the project exceed limits for those contaminants identified in 173-201A-030(2) WAC and/or 173-201A-040 WAC.
- c) Per WAC 173-201A-110(3), a temporary turbidity mixing zone is allowed immediately after necessary in-water construction activities. Under no circumstances shall the following standard be exceeded outside of a radius of 150 feet from the activity causing the turbidity:
 - (1) 10 NTU over background when the background turbidity is 50 NTU or less; or
 - (2) more than a 20 percent increase in turbidity when the background is more than 50 NTU.

2. Monitoring.

Water quality monitoring for turbidity shall be done during filling. The results will be used to: 1) assess compliance with water quality standards; 2) provide notification of any exceedance of a standard; and 3) assess the need for continuing the monitoring activity and appropriate frequency of monitoring. Monitoring results (excepting exceedances, which shall be reported immediately) shall be sent weekly to Helen Pressley at Department of Ecology, PO Box 47600, Olympia WA 98504-7600, (360) 407-6076, or hpre461@ecy.wa.gov. The following monitoring requirements shall be undertaken to assess the water quality impacts.

- a) Monitoring for turbidity shall be done for the first five days of filling. Monitor 2 times per day.
- b) At the monitoring locations, water samples shall be taken at the surface (2.0 feet below), mid-depth, and near bottom (2.0 feet above). Samples taken at the temporary turbidity mixing zone boundary shall be adjusted within the depth range to target the turbidity plume which will be

tracked visually and/or hydro-acoustically. If no distinct turbidity plume can be identified within the depth range, the samples will be taken at the standard depths (i.e., surface, mid-depth, and near bottom).

- c) An exceedance of the water quality standards could result in corrective action depending upon the degree of the exceedance and/or the risk posed by the exceedance to beneficial uses of the water body.

3. Construction Conditions.

- a) 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.
- b) Erosion control devices (e.g., filter fences, stormwater ponds, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting project construction and shall be maintained throughout construction.
- c) 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.

4. Mitigation.

Mitigation for this project shall be implemented as described in the "Blair Waterway Infrastructure Improvements Mitigation Plan" dated June 2004, and the "Mitigation Plan Addendum" dated January 2005.

5. Emergency/Contingency Measures.

- a) 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, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the operator shall immediately take the following actions:
 - i) Cease the operations causing the problem.
 - ii) Assess the cause of the water quality problem and take appropriate measures to correct the problem **and/or** prevent further environmental damage.
 - iii) 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.
- b) During construction, any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited.
- c) 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 Southwest Regional Spill Response Office at (360) 407-6300.

- 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) 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.
- f) Toxic conditions resulting in distressed or dying fish (including dissolved oxygen levels below 5.0 mg/L) are not allowed. If these conditions exist, construction shall cease immediately and the Applicant or the contractor shall contact Ecology's Southwest Regional Spill Response Office at (360) 407-6300.
- g) Construction monitoring: During and immediately after project construction, the Applicant or contractor shall visually monitor the area for distressed or dying fish. If distressed or dying fish are observed outside the mixing zone, in-water work shall cease immediately and the Applicant or the contractor shall contact Ecology's Southwest Regional Spill Response Office at (360) 407-6300.

6. Notification.

- a) **The department shall be notified at least 72 hours prior to the start of work.** Contact Helen Pressley at Department of Ecology, PO Box 47600, Olympia WA 98504-7600, (360) 407-6076, or hpre461@ecy.wa.gov.
- b) The Applicant shall submit an updated application to Ecology if the information contained in the project description is altered by submittals to the federal agency **and/or** state agencies. Within 30 days of receipt of an updated application Ecology will determine if a modification to this Order is required. All submittals shall be sent to the Federal Permit Coordinator at the above address.

7. Duration of Water Quality Certification.

This WQC 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.

Ecology reserves the option to reassess the terms of this Order and amend or revoke, as necessary, in the event that:

- a) New sources of potential contamination are discharged or otherwise stand to significantly affect the quality of sediment, or
- b) New information indicates that filling activities are having a significant adverse impact on water quality or characteristic uses.

8. General Conditions:

- a) 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.
- b) This certification does not exempt and is conditioned upon compliance with other statutes and codes administered by federal, state, and local agencies.
- c) The Applicant shall construct and operate the project in a manner consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology.
- d) 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 for which the federal license or permit is being sought.
- e) The Applicant shall 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.
- f) The Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
- g) Copies of this Order and all related permits, approvals, and documents shall be kept on the project site and readily available for reference by the project managers, construction managers and foremen, other employees and contractors of the Applicant, and state agency personnel.
- h) The Applicant shall ensure that all appropriate supervisors and contractors at the project site and mitigation sites 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 supervisor 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 no less than 7 days before construction begins at the project or mitigation sites. The Applicant shall also provide a similar signed statement to Ecology from each new supervisor or contractor hired or assigned after the project begins within 30 days of hiring.
- i) Ecology retains continuing jurisdiction to make modifications hereto through supplemental Order, if it appears necessary to further protect the public interest.
- j) 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.

Any person aggrieved by Order 2523 may obtain review thereof by appeal. Pursuant to ch. **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

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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 7-29-05 at Lacey, Washington



Brenden McFarland, Section Supervisor

Environmental Review and Transportation Section
Department of Ecology
State of Washington

