



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

August 1, 2005

**REGISTERED MAIL**  
**RB 253 008 528 US**

Port of Olympia  
Attn: Ms. Andrea Fontenot  
915 Washington Street  
Olympia, WA 98501

RE: Water Quality Certification Order Number 2603 for Corps Public Notice 200401252 to replace and reconfigure fire-damaged restaurant and deck, tiered timber bulkhead structure, moorage landing, and stormwater outfall in Budd Inlet, at Olympia, Thurston County, Washington.

Dear Ms. Fontenot:

The public notice issued by U.S. Army Corps of Engineers on May 17, 2005, for proposed work in and near the Budd Inlet, Puget Sound, Thurston County has been reviewed. On behalf of the State of Washington, we certify that the work proposed in the application for Department of Army permit, and Corps 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 applicants' determination that this work is consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicants' compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

- This certification concurrence is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Lori Ochoa at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Paula Ehlers  
Section Manager  
Shorelands and Environmental Assistance Program  
Southwest Regional Office

PL:LO:dn  
Enclosure

cc: Jim Green, US Army Corps of Engineers  
Margie Schirato, WDFW Region 6



**IN THE MATTER OF GRANTING ) ORDER # 2603**  
**A WATER QUALITY ) Corps No. 200401252**  
**CERTIFICATION TO ) Replace and reconfigure fire-damaged restaurant and**  
**Port of Olympia ) deck, tiered timber bulkhead structure, moorage landing,**  
in accordance with 33 U.S.C. 1341 ) **and stormwater outfall in Budd Inlet, at Olympia,**  
FWPCA § 401, RCW 90.48.120, ) **Thurston County, Washington**  
RCW 90.48.260 and WAC 173-201A )

TO: Port of Olympia  
915 Washington Street  
Olympia, WA 98501

ATTN: Ms. Andrea Fontenot

On May 17, 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 work will replace and reconfigure an existing fire-damaged restaurant and deck used for dining. Demolition work will involve the excavation of 1,500 cubic yards of fill and removal of a tiered creosote-timber bulkhead, removal of 220 piling and 4,200 square feet of decking, and removal of a 6-inch stormwater outfall line. Reconstruction work includes driving sheet piling along 220 feet of shoreline, placing 2,730 cubic yards of shoreline cobble and habitat mix, driving 24 steel piling to support a smaller over-water deck and four piling to support the moorage landing, and the installation of a 12-inch stormwater outfall line. Total proposed fill within waters of the US would be approximately 0.12 acres.

Mitigation for the project includes the replacement the replacement of 220 existing creosote piling with 24 steel piling. An existing vertically tiered creosote bulkhead will be replaced with sheet piling and sloped cobble and habitat mix to improve and expand intertidal habitat. Over-water coverage of the restaurant and deck will be reduced by 1,300 square feet and the onsite stormwater will now receive treatment in compliance with Department of Ecology design criteria.

The project is located within Budd Inlet, Puget Sound at 1527 Washington Street, NE, Olympia, Thurston County, WA, 98501.

#### **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 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, RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC, certification is granted to Port of Olympia (Port) subject to the following conditions:

**A. No Further Impairment of Existing Water Quality**

- A1. Budd Inlet, Puget Sound, (WRIA 13, Deschutes) 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(3) 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.
- A2. This segment of the Budd Inlet, Puget Sound 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(3) WAC and/or 173-201A-040 WAC.
- A3. Per WAC 173-201A-110(3), a temporary turbidity mixing zone is allowed immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. Under no circumstance 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.

**B. Timing:**

- B1. This Order is valid until all compliance requirements in this document have been met.
- B2. Work below the ordinary high water mark shall not occur between March 15 through June 14 of any given year.

**C. Notification Conditions:**

- C1. The Port shall notify Ecology's Southwest Regional Office Federal Permit Coordinator seven (7) days prior to the start of work below the ordinary high water mark of Budd Inlet, Puget Sound.
- C2. The Port shall notify Ecology's Southwest Regional Office Federal Permit Coordinator within fourteen (14) days after completion of construction.

- C3. The Port shall ensure that all appropriate project engineers and contractors at the project site shall have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Port 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 or mitigation sites.

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

**D. Monitoring Conditions:**

- D1. During and immediately after project construction, the Port or their contractor shall visibly monitor for the temporary turbidity mixing zone. If water quality exceedances are observed outside the temporary mixing zone, work shall cease immediately and the Port or their contractor shall assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further water quality turbidity exceedances. The Port or their contractor shall notify Ecology's Southwest Regional Office Federal Permit Coordinator at the Southwest Regional Office at (360) 407-6926 of the exceedances.
- D2. If the results of the monitoring show that the water quality standards or project performance standards are not being met additional monitoring and mitigation may be required.

**E. Construction Conditions:**

- E1. Work in or near waters of the state shall be done so that it minimizes 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., silt curtains, silt fences, hay, etc.), shall be in place before starting clearing, filling, and grading work at the impact sites.
- E2. No existing shoreline material (i.e., logs, rocks, gravel cobbles, woody debris or other bed material) shall be relocated or used as bulkhead armor, as fill, or for any other purpose except that bed material located exactly where new pilings and footings are to be placed may be relocated.
- E3. All construction debris shall be properly disposed of upland so that it cannot enter a waterway or wetland or cause water quality degradation to state waters.
- E4. Wash water containing oils, grease, or other hazardous material 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.
- E5. No wood, metal, or concrete preservatives, paints, sealers, glues, epoxies, chemicals, or other substances harmful or toxic to fish or shell fish shall be applied to the pier system once it has been placed within or over the ordinary high water mark of Budd Inlet, Puget Sound.
- E6. The Port shall ensure that fill used for the proposed project does not contain toxic materials in toxic amounts.

**F. Emergency/Contingency Measures:**

- F1. 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:
- F1a. Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
  - F1b. Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-hour spill response team at (360) 407-6300, and within 24 hours to Ecology's Southwest Regional Office Permit Coordinator at (360) 407-6926.
  - F1c. Submit a 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 the Port from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.
- F2. 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.
- F3. Toxic conditions resulting in distressed or dying fish (including dissolved oxygen levels below 5.0 mg/L) are not allowed. If these conditions occur, construction shall cease immediately and the Port of Olympia or the contractor shall contact Ecology's Southwest Regional Spill Response Office at (360) 407-6300.

**G. General Conditions:**

- G1. 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.
- G2. This certification does not exempt the Port from, and is conditioned upon compliance with, other statutes and codes administered by federal, state, and local agencies.
- G3. The Port shall construct and operate the project in a manner consistent with the project description contained in the JARPA and Public Notice for certification, or as otherwise approved by Ecology.
- G4. The Port 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.
- G5. The Port 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.

- G6. 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 Port, and state agency personnel.
- G7. Ecology retains continuing jurisdiction to make modifications hereto through supplemental Order, if it appears necessary to further protect the public interest.
- G8. 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.
- G9. 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:**

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:

Loree' Randall  
Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

*Water Quality Certification 2603  
July 29, 2005  
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*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 July 29, '05 at Lacey, Washington



Paula Ehlers, Section Manager  
Shorelands and Environmental Assistance Program  
Department of Ecology – Southwest Regional Office

Attachment # A  
Water Quality Certification, Order # 2603  
Statement of Understanding

I, \_\_\_\_\_, state that, I will be involved as an agent or contractor to replace and reconfigure the fire damaged restaurant and deck, tiered timber bulkhead structure, moorage landing, and stormwater outfall in Budd Inlet, Puget Sound at Olympia, Thurston County, Washington. I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order #2603 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

Company

\_\_\_\_\_  
Phone Number