



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

September 22, 2011

Doug Chin, Project Manager
King County Water and Land Resources Division
201 South Jackson Street, Suite 600
Seattle, WA 98104-3855

RE: Ecology Denial for Section 401 Water Quality Certification for the May Creek Drainage Improvement Project, Renton, King County, Washington

Dear Mr. Chin:

The U.S. Army Corps of Engineers (Corps) issued a joint public notice with the Washington State Department of Ecology (Ecology) for the above project on September 24, 2010. Ecology has one year to issue an individual Section 401 Water Quality Certification (401 Certification). On August 31, 2010, Ecology notified you by certified letter that this project would require a 401 Certification. On April 21, 2011 and September 1, 2011, Ecology issued additional public notices regarding King County's two revised applications for 401 Certification.

We determined that your application for an individual 401 Certification was incomplete and sent you a certified letter on September 1, 2011 detailing the specific information that was needed to complete your application and stating that if Ecology did not receive all of the required documentation by September 16, 2011, Ecology would deny the 401 Certification for this project. In our September 1, 2011 letter we identified the following information needed in order to complete our review:

- A description of how sediment disposal areas will be stabilized.
- A Construction Water Quality Protection and Monitoring Plan.
- Measures to be taken regarding stream water temperature changes between removal of mature vegetation and when replanted vegetation reaches the size to shade the creek.
- Revisions to the Mitigation Plan.
- Revisions to the sediment monitoring plan.
- Site plan revisions.
- Details on the Long Marsh Creek riparian planting buffer.
- A copy of the Final Long Marsh Creek Sediment Control and Habitat Restoration Project Basis of Design Report.
- Expanded riparian vegetation buffers.
- Study of the resizing or removal of the 148th Avenue SE Bridge.

- Reassessment and redesign of the project to address its effectiveness, including further evaluation and study of sediment transport and downstream erosion, as well as independent review of sediment transport modeling.

On September 16, 2011, Ecology received a response addressing some of the information requested. Unfortunately we have not received all of the documentation needed in order to demonstrate that we have reasonable assurance that state water quality standards will be met. We have attached a project chronology that details that we have been trying to work with you to get the needed information in order to process your request for a 401 Certification. Pursuant to Section 401 of the Clean Water Act, ch. 90.48 RCW and ch. 173-201A WAC, the May Creek Drainage Improvement Project water quality certification is denied without prejudice.

Receipt of a denial without prejudice does not preclude King County Water and Land Resources Division from resubmitting a request for 401 Certification at a later date.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<p>Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503</p> <p>Pollution Control Hearings Board 1111 Israel Rd SW STE 301 Tumwater, WA 98501</p>	<p>Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608</p> <p>Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903</p>

CONTACT INFORMATION

Please direct all questions about this Order to:

Rebekah Padgett
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
(425) 649-7129
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MORE INFORMATION

Pollution Control Hearings Board Website

www.ecy.wa.gov/Boards_PCHB.aspx

Chapter 43.21B RCW - Environmental Hearings Office – Pollution Control Hearings Board

<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

Chapter 371-08 WAC – Practice and Procedure

<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

Chapter 90.48 RCW – Water Pollution Control

<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington

www.ecy.wa.gov/biblio/wac173201A.html

SIGNATURE



Erik Stockdale, Unit Supervisor
Wetlands/401 Unit
Shorelands and Environmental Assistance Program
Northwest Regional Office

September 22, 2011

ES:rrp:cja

Enclosure

By certified mail 7011 0470 0003 3720 9107

cc: Lori Lull, U.S. Army Corps of Engineers
TJ Stetz, U.S. Army Corps of Engineers
Larry Fisher, Washington Department of Fish and Wildlife
Karen Walter, Muckleshoot Indian Tribe
Katie Bonwell

e-cc: Patrick McGraner – NWRO
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Attachment 1: May Creek WQC Permitting Chronology

- 1/26/10 Ecology attended an interagency meeting organized by King County with discussion about the potential to create a multi-agency permitting team. A brief introduction and overview of the project concept at this early stage was presented. The U.S. Army Corps of Engineers (Corps), Ecology, Washington Department of Fish and Wildlife (WDFW), Muckleshoot Indian Tribe, Governor's Office of Regulatory Assistance, and King County representatives were present.
- 2/22/10 Ecology attended a field meeting with King County, WDFW, and the Muckleshoot Indian Tribe. Ecology staff raised concerns about the effectiveness, purpose and need of the proposed project. Specific comments included: the effectiveness of the 15-foot-wide buffers, concerns about direct animal access to stream, severely degraded pastures and the need for farm plans, extent of the wetland and primary sources of hydrology, and concerns about establishing woody vegetation in very wet soils. Ecology observed that livestock have direct access on one of the project properties upstream of the project area.
- 3/24/10 Ecology provided written comments via e-mail that followed up on the 2/22/10 site visit.
- 5/5/10 Ecology participated in an interagency pre-application meeting and provided substantive comments regarding the effectiveness, purpose, and need of the project, as well as the need to redelineate the wetland, buffer width, and limit livestock access to the creek. Ecology raised concerns about 303(d) listing for fecal coliform and the preference for 35-foot buffers and wider planting on the south side buffer to reduce summer temperatures through shading. Ecology questioned the 2002 pilot described by King County where two sediment plugs were removed from side channels on the McFarland property, specifically whether it would be comparable to the current proposal and what post-construction monitoring was completed. Ecology raised the question of whether the proposed one-time dredging would accomplish the goals of the proposal; the County indicated that it was planning a series of projects, working from this site upstream. Ecology also pointed out that the baseline stream report included language that contradicted and would not support this proposal. Downstream erosion concerns were discussed, and King County staff noted that they had conducted modeling and did not believe that the sediment removal would increase erosion downstream.
- King County submitted the Joint Aquatic Resources Permit Application (JARPA) package to Ecology.
- 5/13/10 The Corps canceled the application.
- 6/24/10 Ecology canceled the 401 application based on the Corps' 5/13/10 action.

- 8/16/10 King County submitted a revised JARPA to Ecology.
- 9/8/10 King County submitted a Certification of Consistency with the Washington State Coastal Zone Management (CZM) Program to Ecology.
- 9/16/10 Ecology submitted comments on the State Environmental Policy Act mitigated determination of non-significance (MDNS) regarding effectiveness, purpose, and need of the proposal, buffer width, how wet the left bank is in Reach 4 for establishing canopy cover, the degradation of the pastures and need for farm plans to protect riparian habitat and creeks, and livestock access to the creek.
- 9/20/10 Ecology received substantive public comments from downstream residents. Issues raised included concerns about increased erosion, sediment transport thresholds, cumulative impacts, and the need for additional detailed study of the potential downstream impacts.
- 9/22/10 Ecology received substantive public comments from the Muckleshoot Indian Tribe raising concerns about net loss of habitat, downstream erosion, insufficient buffers and the probability that the proposed dredging will be a short-term fix.
- 9/24/10 Corps issued a joint public notice with Ecology.
- 10/10 Ecology received substantive public comments from downstream residents. Issues raised included concerns about the purpose and need of the project, draining of wetlands, water quality, salmon habitat, increased flow, and bank erosion, as well as questions about the 2002 pilot.
- 10/23/10 Ecology received substantive public comments from the City of Renton that included concern about effects of increased velocity, flow, or erosion on downstream properties.
- 12/16/10 Ecology received King County's responses to Ecology MDNS comments. In the response letter, the County defends the proposed 15-foot buffer not as best available science (BAS) but as an improvement over existing conditions citing property owners' reluctance to expand planting areas, states that it cannot require farm plans from private property owners or require owners with farm plans to implement them properly, and notes that the planting areas will be fenced and will therefore effectively eliminate livestock access to the creek.
- 3/3/11 Ecology and King County jointly extended the CZM review period until 9/8/11.
- 3/18/11 King County submitted another revised JARPA to Ecology. This revision included new impacts to Long Marsh Creek that the County referred to as mitigation, therefore reducing proposed mitigation downstream of 148th Avenue SE.

- 4/5/11 Ecology received substantive public comments from the *Neighbors for May Valley*, who raised concerns about stream flow velocity, volume and timing of storm events, flooding and erosion. Downstream property owners requested that King County allow the project to be delayed at least one water year to establish a pre-project erosion baseline. The downstream citizens requested additional assurances that the proposed dredging will not have unintended negative consequences to downstream properties.
- 4/21/11 Ecology issued a public notice on the revised application.
- 4/26/11 Ecology participated in an interagency site visit where staff raised questions about the effectiveness, purpose, and need of the project, permanent protection of the mitigation area, the buffers on Long Marsh Creek, whether the Long Marsh Creek work was really mitigation, project-specific monitoring of sediments in the project area and downstream, best management practices, proposed buffer widths, how wet the left bank is in Reach 4, and the need for future dredging.
- 4/28/11 Ecology followed up by e-mail documenting questions raised at the 4/26/11 site visit.
- 5/11 Ecology received substantive public comments from downstream property owners questioning assumptions being made by King County based on modeling within the Hydraulics and Hydrologic Analyses using limited data, expressing concerns about downstream erosion, increased turbidity, and the proposed 15-foot planting buffer as not meeting BAS or County code. Specific questions also were raised with regards to the adequacy of the information provided by King County that claimed that the 2002 pilot project along a 300-foot section of the creek upstream of the proposed project was successful, erosion thresholds, potential for shallow well contamination, flow velocity, volume and peak flow during storm events potentially risking sole-access bridges to properties, and the adequacy of the 15-foot planting buffer.
- 5/11/11 Ecology received additional substantive comments from the Muckleshoot Indian Tribe emphasizing the need to improve pasture conditions and control other existing sediment sources through agricultural best management practices and/or farm plans, minimize the dredging area with increased mitigation for impacts, increase the proposed planted buffer width, provide additional riparian plantings, measures to avoid impacts to downstream reaches, mitigation for any unavoidable impact to downstream reaches, future dredging projects, and potential impacts to salmonids.

- 6/10/11 Ecology received King County's responses to Ecology's 4/26/11 and 4/28/11 comments. In its letter, King County stated that downstream impacts have been sufficiently analyzed and that a formal monitoring plan is not warranted; based on previous analysis and current design features, re-sedimentation monitoring is not warranted at this time; and there are no future plans to implement additional upstream sediment removal projects. King County continued to defend the proposed 15-foot buffer as being adequate even within the very wet portion of the left bank in Reach 4. In response to ongoing concerns from Ecology regarding the effectiveness of the proposed project, King County again stated that the project is only designed to reduce overbank pasture flooding for a short period of time on each end of the rainy season and that monitoring wells have been installed to assess groundwater pre- and post-project.
- 7/1/11 Ecology received King County's responses to a public comment in which the County restated that the 15-foot proposed planting buffer, while not based on BAS, is an improvement over existing conditions as demonstrated by the results of the 2002 pilot project upstream of the current proposal and that the continuous hydrologic watershed mode used accounted for all peaks, all durations and all flow rates at all locations. King County reversed its position from 6/10/11 and agreed to conduct downstream monitoring for a period of 5 years post-project.
- Ecology responded to King County by requesting a copy of the downstream monitoring plan with note that the plan should be comprehensive and not simply address the issues raised by one property owner.
- 7/8/11 Ecology received King County's responses to a public comment in which the County stated that downstream monitoring will be conducted for a period of 5 years and that if monitoring data collected clearly shows that erosion problems result from the project, that it will offer technical assistance and perform remediation. The County indicated that it has no future plans to implement additional sediment removal projects upstream of this project site.
- 7/19/11 Ecology received King County's responses to a public comment stating that the project will not increase existing erosion problems downstream, proposing 5 years of downstream monitoring and working with the property owner on a solution if the monitoring shows downstream erosion resulting from this project.
- 7/22/11 Ecology received King County's responses to the Muckleshoot Indian Tribe 5/11/11 comments. The e-mail states that the County does not have plans to implement the other three upstream dredging projects. In response to the tribe's comment that King County Code requires existing livestock operations to implement a farm management plan or meet management standards outlined in the Code, the County indicates that two of the four livestock operations have developed plans and that the buffers specified in these plans are 25 feet (10 feet more than the County is proposing through this project). The County also acknowledges that the 148th Avenue SE Bridge causes a backwater effect.

- 7/26/11 Ecology again visited the project site, including downstream properties.
- 8/2/11 King County submitted another revised JARPA. The revision addresses Long Marsh Creek impacts and includes additional mitigation.
- 9/1/11 Ecology sent a letter by Certified Mail to Doug Chin requesting additional information and stating that project 401 Certification would be denied if the requested documentation was not received at Ecology by September 16, 2011.
- Ecology issued a public notice on the revised application.
- 9/7/11 Ecology and King County jointly extended the CZM review period until 11/8/11.
- 9/14/11 Ecology received a public comment from a property owner reiterating questions about the need for the project and concerns about downstream erosion and flooding impacts
- 9/15/11 Ecology received public comments from a property owner reiterating concerns about downstream erosion and flooding impacts, raising the need for additional erosion monitoring and stream flow devices, and questioning the need for the project. The property owner raises questions about the stream and wetland buffer width, storm surge flows, hydraulic and hydrologic analysis, cumulative impacts, compensatory stormwater storage, and the need for additional data and analysis.
- Ecology received public comments from the Muckleshoot Indian Tribe reiterating concerns about salmonids and habitat, cumulative impacts, likely future dredging, insufficient buffer widths, and the adequacy of mitigation. The letter also notes the need to consider less-impacting alternatives, have enforceable farm plans in place, for further analysis on backwater effect of the McFarland/Gambini footbridge, to consider impacts of sediment deposition in the mitigation alcoves, for sediment accumulation and erosion monitoring, to collect data regarding changes in channel cross-sections and longitudinal profiles and data on flood frequency durations, to monitor for salmonid use, and for a contingency plan.
- 9/16/11 Ecology received additional public comments reiterating concerns about downstream flooding and erosion.
- Ecology received King County's responses to the 9/1/11 letter requesting additional information. While some questions were addressed, outstanding issues remain including: buffers, baseline data, and sediment transport and data about what will happen downstream.