



04/06/2021

Regulatory Branch

July 20, 2020

Ms. Andrea Swisstack
City of Mukilteo Public Works Department
11930 Cyrus Way
Mukilteo, Washington 98275

Reference: NWS-2019-249
Mukilteo, City of
(61st Place West Culvert
Replacement)

Dear Ms. Swisstack:

We have reviewed your application to excavate 200 cubic yards of material and place 50 cubic yards of fill and 200 cubic yards of streambed gravel to replace a culvert and relocate a segment of stream in Smugglers Gulch Creek at Mukilteo, Washington. Based on the information you provided to us, Nationwide Permits (NWP) 14, *Linear Transportation Projects*, and 27, *Aquatic Habitat Restoration, Rehabilitation, and Establishment Activities* (Federal Register January 6, 2017, Vol. 82, No. 4), authorize your proposal as depicted on the enclosed drawings dated March 20, 2020.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed *NWP 14 and 27 Terms and Conditions* and the following special conditions:

a. In order to meet the requirements of the Endangered Species Act (ESA) and Magnuson-Stevens Fishery Conservation and Management Act (MSA) programmatic consultation Fish Passage and Restoration Actions in Washington State (FPRP III) (National Marine Fisheries Service (NMFS) Reference Number WCRO-2014-00004), you must implement and abide by the ESA requirements and/or agreements set forth in the Biological Opinion (BO) dated June 21, 2017, and the Project Information Form dated May 12, 2020 in the enclosed document Appendix A: FPRP III Guidelines and Implementation Forms (NMFS Reference Number WCRO-2014-00004-1841) The BO is available on the U.S. Army Corps of Engineers (Corps) website (Permit Guidebook, Endangered Species, Programmatic Consultations, Fish Passage and Restoration Programmatic Consultations). Within 45 days of completing the permitted work in waters of the U.S., you must provide the Corps the information requested in the FPRP Action

Completion Reporting Form in the enclosed document Appendix A: FPRP III Guidelines and Implementation Forms. If fish salvage occurs as part of your project, you must also provide the Corps the information requested in the FPRP Fish Salvage Reporting Form in the enclosed document Appendix A: FPRP III Guidelines and Implementation Forms, within 45 days of completing the permitted work in waters of the U.S. All information must prominently display the reference number NWS-2019-249. Failure to comply with these requirements constitutes non-compliance with the ESA and your Corps permit. The NMFS is the appropriate authority to determine compliance with the terms and conditions of their BO and with the ESA. If you cannot comply with the terms and conditions of this programmatic consultation, you must, prior to commencing construction, contact the Corps, Seattle District, Regulatory Branch for an individual consultation in accordance with the requirements of the ESA and/or the MSA.

b. In order to meet the requirements of the Endangered Species Act (ESA) 2008 Fish Passage and Restoration Programmatic Consultation (U.S. Fish and Wildlife Service (USFWS) Reference Number 1341-2008-FWS-#F-0209), you must comply with the conditions included in the Biological Evaluation, dated February 7, 2019. If you cannot comply with the terms and conditions of this programmatic consultation, you must, prior to commencing construction, contact the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch for an individual consultation in accordance with the requirements of the ESA.

c. Incidents where any individuals of fish species, marine mammals and/or sea turtles listed by National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the U.S. or structures or work in navigable waters of the U.S. authorized by this Nationwide Permit verification shall be reported to NOAA Fisheries, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the Seattle District of the U.S. Army Corps of Engineers at (206) 764-3495. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

d. In order to meet the requirements of the Endangered Species Act you may conduct the authorized activities from July 16 through February 15 in any year this permit is valid. You shall not conduct work authorized by this permit from February 16 through July 15 in any year this permit is valid.

We have reviewed your project pursuant to the requirements of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic

Preservation Act. We have determined this project complies with the requirements of these laws provided you comply with all of the permit general and special conditions.

Please be reminded that Special Condition “a” of your permit requires that you implement and abide by the Endangered Species Act (ESA) requirements set forth in the programmatic Biological Opinion (BO) for this project. In particular, within 45 days of project completion, you must provide the Action Completion Reporting Form, as described in the BO.

The authorized work complies with the Washington State Department of Ecology’s (Ecology) Water Quality Certification (WQC) requirements and Coastal Zone Management (CZM) consistency determination response for this NWP. No further coordination with Ecology for WQC and CZM is required.

You have not requested a jurisdictional determination for this proposed project. If you believe the U.S. Army Corps of Engineers does not have jurisdiction over all or portions of your project you may request a preliminary or approved jurisdictional determination (JD). If one is requested, please be aware that we may require the submittal of additional information to complete the JD and work authorized in this letter may not occur until the JD has been completed.

Our verification of this NWP authorization is valid until March 18, 2022, unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work has not been completed by that date and you have commenced or are under contract to commence this activity before March 18, 2022, you will have until March 18, 2023, to complete the activity under the enclosed terms and conditions of this NWP. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. You must also obtain all local, State, and other Federal permits that apply to this project.

Upon completing the authorized work, you must fill out and return the enclosed *Certificate of Compliance with Department of the Army Permit*. Thank you for your cooperation during the permitting process. We are interested in your experience with our Regulatory Program and encourage you to complete a customer service survey. These documents and information about our program are available on our website at www.nws.usace.army.mil, select “Regulatory Branch, Permit Information” and then “Contact Us.” A copy of this letter with enclosures will be furnished by email to Mr. Brad Thiele, Northwest Environmental Consulting, LLC, at

brad@northwest-environmental.com. If you have any questions, please contact me at alisa.ralph@usace.army.mil or (206) 764-5529.

Sincerely,

A handwritten signature in blue ink that reads "Alisa R. Ralph". The signature is written in a cursive style with a large initial 'A'.

Alisa Ralph, Project Manager
Regulatory Branch

Enclosures