



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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March 31, 2021

Captain R.G. Rhinehart, U.S. Navy
Commanding Officer
Naval Base Kitsap
120 South Dewey St.
Bremerton, WA 98314-5020

RE: Ecology's Conditional Concurrence for the Naval Base Kitsap's Consistency Determination for the Thin Layer Cap at Mooring G, Kitsap Naval Base, Bremerton, Washington.

Dear Captain R.G. Rhinehart:

The Department of Ecology (Ecology) is issuing a Conditional Concurrence to Naval Base Kitsap for the above-mentioned project. The project involves the placement of a six to nine-inch layer of clean sand directly under the ex-USS INDEPENDENCE in-water footprint, with an additional buffer, which totals the project area to 8.03 acres in Sinclair Inlet on the west side of Mooring G at Naval Base (NAVBASE) Kitsap Bremerton. The condition relates to the Navy's receipt of the Section 401 Water Quality Certification (401 WQC).

Due to the confusion surrounding federal consistency requirements and processes, and the amount of time Ecology has spent working with Naval Base Kitsap on this project, we are including some details in order to clearly state the record and provide information for future reference.

On June 29, 2020, the Navy submitted its Consistency Determination (CD) to Ecology, and stated that the proposed project was consistent to the maximum extent practicable with Washington's Coastal Zone Management Program (CZMP) pursuant to Section 307 of the Coastal Zone Management Act (CZMA). According to federal regulations, when a federal agency submits a CD to Ecology, it is acknowledging that the proposed project has foreseeable effects to Washington's coastal zone resources and uses. (CFR 930.36 (a)(b)).

The Navy's CD identified the Shoreline Management Act (SMA) and the State Water Pollution Control Act as containing enforceable policies that would be triggered by the project. The SMA analysis addressed only a few policies found in the SMA and disregarded those found in WAC 173-26. For that reason, Ecology sent the Navy a message within the 14 days allowed for in CFR 930.41 alerting them that the CD was incomplete and that a fuller analysis of the SMA and the regulations was necessary in order for Ecology to fully understand the impacts and how the Navy was going to address them.

Ecology recommended that the Navy follow the Kitsap County Shoreline Master Program (SMP) to assist with its analysis – while not NOAA-approved enforceable policies, Ecology recommends that the simplest path to demonstrate consistency with the SMA is to prepare an analysis of the applicable SMP. However, the Navy chose to prepare a table addressing the WACs in 173-26 as an option and sent it to Ecology on September 17, 2020. Ecology deemed that table incomplete and, on October 20, 2020, Ecology sent the Navy the specific enforceable policies that needed to be addressed. Not until January 20, 2021 did the Navy address those policies, and Ecology deemed the CD complete, which started the 75-day review period.

In its June, 2020 CD, the Navy also indicated that it would get a Section 401 Water Quality Certification (401 WQC) from Ecology, and Ecology notified the Navy that it should perhaps delay submitting the complete CD until the timing with the 401 WQC was worked out. Ecology does not issue a CZM federal consistency decision until it is satisfied that all of the enforceable policies have been met, and thus needs evidence that the 401 WQC has been issued prior to issuing its decision. The Navy argued that Ecology has always given it a Conditional Concurrence ahead of the 401 WQC decision, so that the Navy can get Ecology's CZM decision in order to mesh with its NEPA process; however, Ecology can find only one example of a Conditional Concurrence issued to the Navy relating to the 401 WQC since 2008.

In order to demonstrate good faith and cooperation between the agencies, and in recognition that the Navy was unfamiliar with its processes, Ecology decided to issue a Conditional Concurrence for the Thin Layer Cap at Mooring G project including the condition that the Navy obtain a 401 WQC. Thus, the following condition is necessary in order for the Navy to demonstrate that the project is consistent with the Washington State Water Pollution Control Act, its regulations and water quality standards. Receipt of the 401 WQC ensures that the project meets the requirements of the law, regulations, and standards.

Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended, Ecology Concurs with the Navy's determination that the proposed work is consistent with Washington's CZM Program, provided the following condition is met:

Naval Base Kitsap shall obtain a Section 401 Water Quality Certification decision from the Department of Ecology prior to conducting any work at the site.

Pursuant to 15 CFR 930.4 Ecology is informing the Navy that if it fails to meet the above condition, then Ecology and the Navy will treat this Conditional Concurrence letter as an Objection. The Navy shall immediately notify Ecology if the condition is not acceptable. The Navy has the opportunity to appeal Ecology's objection to the Secretary of Commerce within 30 days from receipt of Ecology's Conditional Concurrence/Objection.

Ecology is taking this opportunity to reiterate to the Navy that, for future projects, the Navy will be required to obtain the 401 WQC prior to Ecology issuing its CZM decision. This practice ensures that a proposed project is consistent with all of the applicable enforceable policies of Washington's CZMP. Ecology welcomes further discussions with the Navy about the federal

consistency process, especially in light of the CZMA's call for early coordination and cooperation.

If you have questions about this Conditional Concurrence, please contact Terry Swanson at (360) 584-3744 or via email at terry.swanson@ecy.wa.gov.

YOUR RIGHT TO APPEAL

You have a right to appeal this decision to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this decision. 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 all of the following within 30 days of the date of receipt of this decision: File your appeal and a copy of this decision 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 decision 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 |
|--|---|
| Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503 | Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608 |
| Pollution Control Hearings Board 1111 Israel RD SW STE 301 Tumwater, WA 98501 | Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903 |

TLP/Navy
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Sincerely,

A handwritten signature in blue ink, appearing to read 'Brenden', with a stylized flourish at the end.

Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

E-CC: Julia Stockton, Naval Base Kitsap Bremerton Environmental
Jason Sweeney, U.S. Army Corps of Engineers
Loree' Randall, Maria Sandercock, Rebekah Padgett, Joe Burcar, Ecology
ecyrefedpermits@ecy.wa.gov