



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Region Office
PO Box 330316, Shoreline, WA 98133-9716 • 206-594-0000

May 7, 2025

John Porter III
15006 2nd Avenue West
Lynnwood, WA 98087

Re: Water Quality Certification Order No. **23525** (Corps No. **NWS-2023-0181**), Porter Bulkhead Replacement, Island County, Washington

Dear John Porter III:

On September 18, 2024, John Porter III submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Porter Bulkhead Replacement, Island County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies with conditions that the work described in the Water Quality Certification Request and supplemental documents complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. **This certification is subject to the enclosed Water Quality Certification Order (WQC Order).**

Please ensure that anyone doing work under this WQC Order has read, is familiar with, and is able to follow all of the provisions within the attached WQC Order.

If you have any questions about this decision, please contact Austin Schmalz at (425) 301-6989. The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

Joe Burcar, Section Manager
Northwest Region Office
Shorelands and Environmental Assistance Program

Enclosure (1)

By certified mail: 9171 9690 0935 0233 1814 05

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Sent via e-mail: john@jrp3.net

E-cc: Morgan O'Rourke-Liggett, U.S. Army Corps of Engineers

Hannah Booth, WDFW

Jenny Rotsen, Sealevel Bulkhead Builders

Erin Hanlon Brown, Ecology

Austin Schmalz, Ecology

ecyrefedpermits@ecy.wa.gov

**In The Matter of Granting a Water Quality
Certification with Conditions to John Porter III
pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW
90.48.260 and Chapter 173-201A WAC**

John Porter III
15006 2nd Avenue West
Lynnwood, WA 98087

WQC Order No.	23525
Corps Reference No.	NWS-2023-0181
Site Location	Porter Bulkhead Replacement located within Port Susan, Camano Island, Island County, Washington.

John Porter III submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Porter Bulkhead Replacement, Island County, Washington. The required processing dates are listed below:

- On 8/8/2024, the John Porter III submitted a pre-filing meeting request.
- On 9/18/2024, Ecology received a request for Clean Water Section 401 Water Quality Certification.
- On 9/24/2024, John Porter III submitted additional information, and the Department of Ecology (Ecology) considered the Request valid on this date.
- On 5/29/2024, the U.S. Army Corps of Engineers (Corps) sent an email notification to Ecology that they are reviewing the project for authorization under the Nationwide Permit (NWP) Program.
- On 10/7/2024, Ecology issued a public notice for the project.
- Ecology's "Reasonable Period of Time" for this project has been established as 9/18/2025.

This project proposes to replace a timber bulkhead with a soldier pile and concrete wall 4 feet landward of the existing bulkhead. The existing 110 linear feet (LF) creosote bulkhead would be removed via excavator and direct pull of the pilings. Temporary excavation of 50 cubic yards (CY) and backfill of 50 CY would be conducted during the removal of the existing bulkhead. The new soldier piles would be installed via pile driver or drilled shaft, with pre-cast concrete lagging panels spanning between the piles.

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The project site is located at 2541 Bretland Road in Camano Island, Port Susan, Island County, Washington, Section 4, Township 30 N., Range 3 E., within Water Resource Inventory Area (WRIA) 6 - Island.

With this WQC Order, Ecology is granting with conditions John Porter III's request for a Section 401 Water Quality Certification for the Porter Bulkhead Replacement project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on 9/18/2024, and the following supporting documentation:

1. Email letter to Ecology received 9/18/2024 confirming work will be done during low tides
2. Water Quality Monitoring Plan received 9/24/2024
3. Updated drawing set received 3/10/2025

Based on the information submitted, Ecology has determined that the discharge from the project will comply with state water quality requirements. Prior to undertaking any changes that materially alter the project, John Porter III must contact Ecology to determine whether a new Section 401 Water Quality Certification is required.

Issuance of this Section 401 Water Quality Certification for this proposal does not authorize John Porter III to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC), or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this Section 401 Water Quality Certification absolves John Porter III from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

Special Conditions:

1. This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues a Department of the Army (DA) permit for this project. WQC Order No. 23525 will remain valid until January 31st, 2027.
 - Justification – Certifications are required for any license or permit that authorizes an activity that may result in a discharge or fill material into waters. This WQC Order is not valid until the Federal agency issues a permit. Additionally, Ecology needs to be able to specify how long the WQC Order will be in effect.
 - Citation – Chapter 90.48 RCW, Chapter 173-201A WAC, and WAC 173-225-010.
2. John Porter III shall send a copy of the final Federal permit via e-mail to fednotification@ecy.wa.gov and cc to Austin.Schmalz@ecy.wa.gov prior to the starting of any work authorized by this WQC Order. If the Federal Agency determines the proposed project does not require a Federal permit, the John Porter III shall immediately inform Ecology.

- Justification - This condition is needed to ensure that the federal permit has been issued and all the conditions of the WQC Order have been included into the federal permit.
 - Citation - 40 CFR 121.10, 40 CFR 121.11, and Chapter 90.48 RCW.
3. To transfer this WQC Order to a new owner or operator John Porter III shall:
- a. Complete a Request for Transfer of Order with a specific transfer date of the WQC Order's obligations, coverage, and liability and submit it to Ecology at fednotification@ecy.wa.gov and cc to Austin.Schmalz@ecy.wa.gov. Link to form: <https://apps.ecology.wa.gov/publications/SummaryPages/ECY070695.html>;
 - b. Provide a copy of this WQC Order to the new owner or operator; and
 - c. The transfer is not considered valid until the John Porter III receives written notification from Ecology that the transfer has been approved.
 - Justification – Ecology has independent state authority to ensure protection of state water quality. Ecology needs to ensure that anyone conducting work at the project, including any new owners or operators, are aware of and understand the required conditions of this WQC Order to ensure compliance with the water quality standards and other applicable state laws.
 - Citation – 40 CFR 121.5, Chapter 90.48 RCW, RCW 90.48.030, Chapter 173-201A WAC, and WAC 173-225-010.
4. All activities within the wetted perimeter of Port Susan may be conducted between July 15th and January 31st of any year with the condition of a forage fish spawning survey 72 hours prior to work starting that does not detect eggs.
- Justification - This condition is reaffirming the project will take place during a time period that will not harm fish or other aquatic species.
 - Citation - Chapter 77.55 RCW, Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.080, Chapter 173-201A WAC, WAC 173-201A-300, WAC 173-201A-330, WAC 173-225-010, and Chapter 220-660 WAC.
5. Barge grounding will be limited to the extent practicable and restricted to the designated site in order to minimize potential direct or indirect impacts to eelgrass and forage fish spawning habitat.

- Justification – This condition is necessary to protect shallow water habitat and prevent suspension of sediment. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.
 - Citation - Chapter 90.48 RCW, RCW 90.48.030, Chapter 173-201A WAC, 173-201A-300-330 WAC, and Chapter 173-204 WAC
6. Work below the ordinary high water mark will be conducted in the dry, at low tide.
- Justification - Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.
 - Citation - Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.080, Chapter 173-201A WAC, WAC 173-201A-300-330, WAC 173-204-120, and WAC 173-225-010.
7. Any work that causes distressed or dying fish or discharges of oil, fuel, or other chemicals into state waters or onto land with a potential for entry into state waters is prohibited. If such work, conditions, or discharges occur, immediately notify Ecology’s Regional Spill Response Office at 360-407-6300 and the Washington State Department of Fish & Wildlife with the nature and details of the problem, any actions taken to correct the problem, and any proposed changes in operation to prevent further problems. You will also need to notify the Washington Emergency Management Division at 1-800-258-5990, for spills to water only. This condition is necessary to prevent oil and other hazardous materials spills from causing environmental damage and to ensure compliance with water quality requirements. The sooner a spill is reported, the quicker it can be addressed, resulting in less harm.
- Justification - This condition is necessary to prevent oil and hazardous materials spills from causing environmental damage and to ensure compliance with water quality requirements. The sooner a spill is reported, the quicker it can be addressed, resulting in less harm. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.
 - Citation - Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.080, Chapter 90.56 RCW, RCW 90.56.280, Chapter 173-201A WAC, WAC 173-201A-300 - 330, WAC 173-204-120, WAC 173-225-010, and WAC 173-303-145.

In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, this WQC is granted with conditions to the John Porter III for the Porter Bulkhead Replacement project.

Your right to appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt. 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 Order:

- File your notice of appeal and a copy of this Order with the PCHB (see filing information below). "Filing" means actual receipt by the PCHB during regular business hours as defined in WAC 371-08-305 and -335. "Notice of appeal" is defined in WAC 371-08-340.
- Serve a copy of your notice of appeal and this Order on the Department of Ecology by mail, in person, or by email (see addresses below).

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

Address and Location Information

Filing with the PCHB

For the most current information regarding filing with the PCHB, visit: <https://elaho.wa.gov/> or call: 360-664-9160.

Service on Ecology

Street Address:

Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

Mailing Address:

Department of Ecology
Attn: Appeals Processing Desk
PO Box 47608
Olympia, WA 98504-7608

E-Mail Address:

ecologyappeals@ecy.wa.gov

Americans with Disabilities Act Information

Accommodation Requests

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-6831 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

Contact Information

Please direct all questions about this WQC Order to:

Austin Schmalz

Department of Ecology

(425) 301-6989

Austin.Schmalz@ecy.wa.gov

More Information

- **Pollution Control Hearings Board Website**
<https://eluhho.wa.gov>
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Chapter 90.48 RCW – Water Pollution Control**
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173.204 WAC – Sediment Management Standards**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>

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- **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>
- **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

Signature

Dated this 7 day of May, 2025 at the Department of Ecology, Shoreline, Washington.



Joe Burcar, Section Manager
Northwest Region Office
Shorelands and Environmental Assistance Program