

RESOLUTION NO. 1710

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE CITY MANAGER TO EXECUTE A PERMIT FROM THE ARMY CORPS OF ENGINEERS TO FILL WETLANDS REQUIRED BY THE PORT OF TACOMA INTERCHANGE PROJECT AND TO EXECUTE A DEED RESTRICTION ON PROJECT'S WETLAND MITIGATION SITES

WHEREAS, the Port of Tacoma I-5 Interchange Project will require the permanent fill of 8.95 acres of wetlands in the interchange infield; and

WHEREAS, mitigation for loss of the wetlands will occur at Brookville Gardens and Oxbow Advance Mitigation sites; and

WHEREAS, a permit is required from the Army Corps of Engineers before the infield wetlands can be filled; and

WHEREAS, the Corps has proffered a permit setting forth the terms and conditions regarding fill of the infield wetlands and construction and monitoring of the mitigation sites, in the form attached hereto as Exhibit A; and

WHEREAS, Special Condition F of the permit requires that City to record a deed restriction on the Brookville Gardens and Oxbow Advance Mitigation sites, prohibiting fill or other development on the mitigation areas of each; and

WHEREAS, the Council finds that it is in the City's interest execute the permit and authorize the recording of the deed restriction; now; therefore,

BE IT RESOLVED that the City Manager is hereby authorized to execute the Department of the Army Permit NWS-2014-610-DOT substantially in the form attached hereto as Exhibit A.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and record a deed restriction on the Brookville Gardens and Oxbow Advance Mitigation sites in accordance with Special Condition F of the permit.

ADOPTED by the City Council at an open public meeting held on the 8th day of March, 2016.


Winston Marsh, Mayor

Attest:


Carol Etgen, City Clerk

EXHIBIT A
DEPARTMENT OF THE ARMY PERMIT

Permittee: City of Fife

3725 Pacific Highway East
Fife, Washington 98424

Permit No: NWS-2014-610-DOT

Issuing Office: Seattle District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: The City of Fife will reconfigure the existing Interstate 5 (I-5)/Port of Tacoma Road Interchange (in accordance with the plans and drawings dated April 3, 2014, attached hereto which are incorporated in and made a part of this permit). Interchange improvements would result in permanent fill to 8.95 acres of wetland. These impacts will occur to 7.34 acres of Washington State Department of Ecology (Ecology) rated Category III and 1.61 acres of Category IV, depressional, palustrine emergent wetlands. Short-term temporary impacts would occur to 0.54 acre of Category III and 0.03 acre of Category IV wetland. All temporary wetland impacts will be restored on-site and planted with native emergent and woody vegetation. Off-site mitigation for permanent impacts will occur at the Brookville Gardens and Oxbow Advance Mitigation Sites. The purpose of the project is to reduce congestion and improve safety on I-5, within the interchange, and to the Port of Tacoma and local streets in the City of Fife.

Project Location: In wetlands at the City of Fife, Pierce County, Washington.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on _____. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least 1 month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in accordance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification to this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

7. After a detailed and careful review of all the conditions contained in this permit, the permittee acknowledges that, although said conditions were required by the Corps, nonetheless the permittee agreed to those conditions voluntarily to facilitate issuance of the permit; the permittee will comply fully with all the terms of all the permit conditions.

Special Conditions:

- a. You must provide a copy of the permit transmittal letter, permit form, and drawings to all contractors performing any of the authorized work.
- b. The permittee shall implement and abide by the mitigation plan, *Wetland Mitigation Plan, I-5/Port of Tacoma Road Interchange Improvement Project* dated November 2015. Mitigation shall be constructed in advance of impacts planned for the Port of Tacoma Interchange in order to receive the reduced ratios proposed in the plan. Advance mitigation credits were granted for the mitigation sites with the expectation that the mitigation sites would be constructed two years prior to wetland impacts. If construction of the mitigation sites are not completed two years prior to wetland impacts for the interchange construction, additional mitigation will be required.
- c. The U.S. Army Corps of Engineers (Corps) shall be notified a minimum of two weeks before the start of project construction. A status report on the implementation of the authorized work and on the construction of the mitigation shall be submitted annually to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch by October 31st each year until mitigation and project construction is complete as determined by the Corps. This report must also include photographs documenting replanting of the on-site temporary impact areas. This report must prominently display the reference number NWS-2014-610-DOT.
- d. An as-built mitigation construction report and as-built drawings of the mitigation areas shall be submitted upon completion of mitigation construction, in lieu of the status report described in Special Condition "c." This report shall provide documentation and photographs that the long-term site protection measures defined in the mitigation plan for the Oxbow and Brookville Gardens Sites have been completed. This report must be submitted to the U.S. Army Corps of Engineers (Corps), Seattle District, Regulatory Branch for review and approval and must prominently display the reference number NWS-2014-610-DOT. The year mitigation construction is completed, as determined by the Corps, represents Year 0 for mitigation monitoring.
- e. Mitigation monitoring shall be performed for years 1, 2, 3, 5, 7, and 10 and mitigation monitoring reports summarizing all monitoring results will be due in years 1, 3, 5, 7, and 10 from the due date of the as-built drawings of the mitigation site. All reports must be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch and must prominently display the reference number NWS-2014-610-DOT.
- f. The wetland area created and enhanced for advance mitigation, shall not be made the subject of a future individual or general Department of the Army permit application for fill or other development, except for the purposes of enhancing or restoring the mitigation associated with this project. In addition, a description of the mitigation area identified in the final mitigation plan as approved, and any subsequent permit mitigation area revisions, will be recorded with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records to or interest in real property. Proof of this recorded documentation

must be provided to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch within 60 days from the date of permit issuance.

- g. Mitigation value for the site will be evaluated by the U.S. Army Corps of Engineers when site monitoring demonstrates the site is successfully meeting the stated performance standards and achieving a Category III or higher wetland. If a Category III or higher wetland is not achieved additional mitigation may be required for expected impacts associated with the Port of Tacoma Interchange project.
- h. Your responsibility to complete the required compensatory mitigation as set forth in Special Condition "b" will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the U.S. Army Corps of Engineers.
- i. Although the U.S. Army Corps of Engineers (Corps) will consider advanced mitigation for future projects at the Oxbow and Brookville Gardens Mitigation Sites, we have not, to date, evaluated the applicability of the mitigation proposal to any future projects that may propose to utilize available additional mitigation. Therefore, the Corps will not guarantee use of the site for future City of Fife projects. The evaluation of the use of extra mitigation credit will be assessed at the time a site is proposed for use. The sites can only be used by the City of Fife, and the City of Fife must demonstrate the functions achieved at the sites will compensate for functions proposed to be impacted.
- j. The City of Fife shall submit a ledger documenting the debit of 1.45 credits of wetland enhancement credit, 0.37 acre of stream creation credit, and 7.13 acres of wetland creation credits from the Oxbow and Brookville Gardens Mitigation Sites. The ledger shall also document a potential 3.77 acres of wetland creation credit may be available for future use. This ledger shall be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch for review and approval within 60 days from the date of permit issuance, and must prominently display the reference number NWS-2014-610-DOT.

Further Information:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:
 - Section 10 of the Rivers and Harbor Act of 1899 (33 United States Code (U.S.C.) 403).
 - Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C 1413).
2. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorization required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of the permit.
 - b. The information provided by you in support of your application proves to have been false, incomplete, or inaccurate (See 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 Code of Federal Regulations (CFR), Part 325.7 or enforcement procedures such as those contained in 33 CFR, Parts 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR, Part 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

City of Fife

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

John G. Buck
Colonel, Corps of Engineers
District Engineer

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEEE)

(DATE)