



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

Regulatory Branch

June 28, 2016

Mr. Andy Loch
City of Bothell – Department of Public Works
9654 Northeast 182nd Street
Bothell, Washington 98011

Reference: NWS-2015-465
City of Bothell
(Sammamish River Off-
Channel and Wetland
Habitat Restoration Project)

Dear Mr. Loch:

We have reviewed your application to construct off channel and wetland habitat adjacent to the Sammamish River at Bothell, Washington. Based on the information you provided to us, Nationwide Permit (NWP) 27, *Aquatic Habitat Restoration, Establishment, and Enhancement Activities* (Federal Register February 21, 2012, Vol. 77, No. 34), authorizes your proposal as depicted on the enclosed drawings dated March 4, 2016.

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

- a. In order to meet the requirements of the Endangered Species Act (ESA) 2008 Fish Passage and Restoration Programmatic Consultation (National Marine Fisheries Reference No. 2008/03598; U.S. Fish and Wildlife Service Reference No. 1341-2008-FWS- #F-0209), you must comply with the conditions included in the *Specific Project Information Form* dated December 14, 2015. 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 and/or the Magnuson-Stevens Fishery Conservation and Management Act.
- b. This U.S. Army Corps of Engineers (Corps) permit does not authorize you to take a threatened or endangered species, in particular the Puget Sound Chinook and Puget Sound steelhead. In order to legally take a listed species, you must have a separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permits,

or ESA Section 7 consultation Biological Opinion (BO) with non-discretionary “incidental take” provisions with which you must comply). The Habitat Restoration Program Limit 8 BO prepared by the National Marine Fisheries Service (NMFS) dated February 28, 2007 contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the specified “incidental take” in the BO (NMFS Reference Number 2006/05601). Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the BO. These terms and conditions are incorporated by reference in this permit. Failure to comply with the commitments made in this document constitutes non-compliance with the ESA and your Corps permit. The NMFS is the appropriate authority to determine compliance with 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 in-water activities from July 16 through July 31 in any year this permit is valid. You shall not conduct in-water work authorized by this permit from August 1 through July 15 in any year this permit is valid.

To satisfy the provisions of the 2008 Fish Passage and Restoration programmatic consultation in accordance with Special Condition “a” above, please be reminded that you must provide the following information upon completion of your project:

1. Project completion date.
2. Fish capture and release report for projects requiring dewatering. (For additional details, see Appendix A “Dewatering and Fish Capture Protocol” in the Specific Project Information Form you submitted).

3. Sediment monitoring report for projects requiring in-water work, including the extent and duration of downstream turbidity impacts measured every 20 minutes during construction. (For additional details, see question I.R. of the Specific Project Information Form you submitted).

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.

The authorized work complies with the Washington State Department of Ecology's (Ecology) Water Quality Certification and the Coastal Zone Management Act requirements for this NWP. No further coordination with Ecology is required.

We have prepared and enclosed a *Preliminary Jurisdictional Determination* (JD) dated April 22, 2016, which is a written indication that wetlands and waterways within your project area may be waters of the U.S. Such waters will be treated as jurisdictional waters of the U.S. for purposes of computation of impact area and compensatory mitigation requirements associated with your permit application. If you believe the Preliminary JD is inaccurate, you may request an Approved JD, which is an official determination regarding the presence or absence of waters of the U.S. If one is requested, please be aware that we may require the submittal of additional information to complete an approved JD and work authorized in this letter may not occur until the approved JD has been finalized.

Our verification of this NWP authorization is valid until March 18, 2017, 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, 2017, you will have until March 18, 2018, 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* form. 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 form. This form and information about our program is 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 to Mr. Paul Devries of R2 Resource Consultants, Inc. at 15250

Northeast 95th Street, Redmond, Washington 98052. If you have any questions, please contact me at brian.d.hooper@usace.army.mil or (206) 316-3975.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Bank". The signature is written in a cursive, flowing style.

FOR
Brian Hooper, Project Manager
Regulatory Branch

Enclosures

cc: letter only via email to Washington Department of Ecology, Federal Permit Coordinator at:
ecyrefedpermits@ecy.wa.gov

cc: w/drawings only:
U.S. Fish and Wildlife Service (Lacey) at: darold_rhodes@fws.gov