



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

Regulatory Branch

November 30, 2020

Stephanie Sullivan
City of Sammamish Public Works Department
801-228th Avenue Southeast
Sammamish, Washington 98075

Reference: NWS-2020-424
Ebright Creek Fish Passage
Project (City of
Sammamish)

Dear Ms. Sullivan:

We have reviewed your application to excavate and place fill waterward of the ordinary high water mark to replace two fish barrier culverts with a fish passable culvert in Ebright Creek and one wetland, on East Lake Sammamish Parkway Southeast in Sammamish, King County, Washington. Based on the information you provided to us, Nationwide Permit (NWP) 14, *Linear Transportation Projects* (Federal Register January 6, 2017, Vol. 82, No. 4), authorizes your proposal as depicted on the enclosed drawings dated November 2020.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed *NWP 14, 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 July 6, 2020 in the enclosed document *Appendix A: FPRP III Guidelines and Implementation Forms* (NMFS Reference Number WCRO-2014-00004-2085). 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-2020-424. 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 April 22, 2020, (USFWS Reference Number 01EWF00-2020-TA-1341). 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 in-water activities during the period from July 16 through September 30 in

any year this permit is valid. You shall not conduct any in-water work authorized by this permit from October 1 through July 15 in any year this permit is valid.

- e. You must implement and abide by the restoration plan shown on Sheets 21-23 of 23 in the approved project drawings dated November 2020. An as-built report and as-built drawings and photographs of the planted stream banks and wetland areas shall be submitted within 13 months from the date of this authorization. This report must be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch at nws.compliance@usace.army.mil and must prominently display the reference number NWS-2020-424.

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 Conditions “A and B” 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 and Fish Salvage Reporting Form, as described in the BO.

We are unable to determine whether or not your project requires individual Water Quality Certification (WQC) and/or a Coastal Zone Management (CZM) consistency determination response] from the Washington State Department of Ecology (Ecology). Before you may proceed with the work authorized by this NWP, you must contact Ecology regarding these requirements at: Washington Department of Ecology, Federal Permit Coordinator, P.O. Box 47600, Olympia, Washington 98504-7660; telephone: (360) 407-6076; or email: ecyrefedpermits@ecy.wa.gov.

If more than 180 days pass from when you provide Ecology a copy of this letter and request your individual WQC and CZM consistency determination concurrence review and you have not heard from Ecology, your requirement to obtain an individual WQC and CZM consistency determination response becomes waived. You may then proceed to construction.

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.

You are cautioned that any change in project location or plans will require that you submit a copy of the revised plans to this office and obtain our approval before you begin work. Deviating from the approved plans could result in the assessment of criminal or civil penalties. Please note that we may need to reinitiate consultation with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service in order to authorize any work not already included in the enclosed plans.

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 will be furnished to Mark Daniel at mdaniel@wastshedco.com. If you have any questions, please contact me at nicole.t.evans@usace.army.mil or (360) 545-2361.

Sincerely,

A handwritten signature in black ink that reads "Nicole Evans". The signature is written in a cursive, flowing style.

Nicole T. Evans, Project Manager
Regulatory Branch

Enclosures