

# DEPARTMENT OF THE ARMY PERMIT

**Permittee:** WA St Dept of Transportation

600 108th Avenue Northeast  
Bellevue, Washington 98004

**Permit No:** NWS-2020-235-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:** Modify Interstate 405 (I-405) by adding one lane in each direction from SR 522 to SR 527 to create a dual lane express toll system. The project would have permanent, direct impacts to 5.0 acres of wetland; long-term temporary impacts to 0.196 of an acre of wetland; and conversion impacts from wetland to stream conversion in 0.80 of an acre of wetland (0.756 acre will be a change of PSS wetland to PEM/stream channel wetland to reconnect an historic stream channel through the wetland, the stream channel is now piped, and 0.035 is wetland to stream channel for fish barrier removals). Permanent stream impacts total 0.37 of an acre which includes fill for new fish passable culverts and stream bed cobble placement for habitat improvements. There will also be 0.13 of an acre of temporary stream impacts for construction. Work will be constructed in accordance with the plans and drawings dated November 5, 2020, attached hereto which are incorporated in and made a part of this permit. The purpose of the project is to improve safety and relieve congestion on I-405.

**Project Location:** In wetlands, ditches, the Sammamish River and in Juanita, North, Par, North and South Fork Perry, Queensborough and Crystal Creeks, Unnamed Tributary (UNT) to Par Creek, and Streams/Drainages 22.25L, KL14, 42, 25.0L, 66 and Watercourse 70, a constructed drainage. Work will occur on I-405 from State Route (SR) 522 to SR 527 near the Cities of Bothell and Kirkland, in Snohomish and King Counties, Washington.

## Permit Conditions:

### *General Conditions:*

1. The time limit for completing the work authorized ends on (5 years from approval date) \_\_\_\_\_. 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. In order to meet the requirements of Section 14 of the Rivers and Harbors Act, you must comply with the Section 408 Standard Terms and Conditions, and the Special Terms and Conditions provided in the U.S. Army Corps of Engineers (Corps) authorization to modify the Federal Project on the Sammamish River as documented by the Section 408 Federal Project approval from the Corps of Engineers Planning, Environmental and Cultural Resources Branch, dated November 25, 2020. All conditions of the authorization letter shall be implemented in their entirety.
- c. This U.S. Army Corps of Engineers (Corps) permit does not authorize you to take a threatened or endangered species, in particular Chinook salmon, and 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 permit, or ESA Section 7 consultation Biological Opinion (BO) with non-discretionary "incidental take" provisions with which you must comply). The Interstate 405, State Route 522 Vicinity to State Route 527 Express Toll Lanes Improvement Project BO prepared by the National Marine Fisheries Service (NMFS) dated June 16, 2020, 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 WCRO-2019-02613). 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.
- d. In order to protect the Essential Fish Habitat (EFH) for Pacific salmon listed under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), any conservation recommendations as agreed to by the Federal Highway Administration and coordinated with the National Marine Fisheries Service are incorporated by reference in this permit. Failure to comply with the commitments made in this negotiation constitutes non-compliance with the MSA and your U.S. Army Corps of Engineers permit.
- e. You must implement and abide by the Endangered Species Act (ESA) requirements and/or agreements set forth in the Interstate 405, State Route 522 Vicinity to State Route 527 Express Toll Lanes Improvement Project Biological Assessment, dated September 16, 2019, in its entirety. The U.S. Fish and Wildlife Service (USFWS) provided a Letter of Concurrence (LOC) with a finding of "may affect, not likely to adversely affect" based on this document on November 27, 2019 (USFWS Reference Number 01EWF00-2019-I-1608). The USFWS will be informed of this permit issuance. Failure to comply with the commitments made in this consultation constitutes non-compliance with the ESA and your U.S. Army

Corps of Engineers permit. The USFWS is the appropriate authority to determine compliance with ESA.

- f. In order to protect the listed threatened and endangered species in the project area, you may conduct the authorized activities in the work window as agreed to and documented in writing through consultation by the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service (Services) in any year this permit is valid. If changes to the originally authorized work window are proposed, you must re-coordinate these changes with the Services and receive written concurrence on the changes. Copies of the concurrence(s) must be sent to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch, within 10 days of the date of the revised concurrence.
- g. You shall implement and abide by the *I-405, SR 522 Vicinity to SR 527 Express Toll Lanes Improvement Project, Wetland and Stream Mitigation Report* dated November 2020 in its entirety. Any changes to the mitigation report shall be coordinated with the Corps for review and approval.

You shall submit documentation of completed mitigation transactions as follows:

1. You shall obtain from the Keller Farm Bank sponsor documentation of the completed mitigation bank transaction. You shall submit to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch documentation on the completed mitigation bank transaction purchase of 3.912 mitigation bank credits prior to performing work in waters of the U.S. authorized by this permit. All submittals must prominently display the reference number NWS-2020-235-DOT.
  2. Deduct 0.897 credits from the WSDOT owned Happy Valley Mitigation Site. The mitigation transaction and record of the deduction shall be recorded on the permanent ledger showing the use of the site for this project as well as previous project transactions. The updated ledger shall be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch prior to performing work in waters of the U.S. authorized by this permit and must prominently display the reference number NWS-2020-235-DOT.
- h. A status report on the implementation of the authorized work and on the construction of the wetland, stream and buffer mitigation areas at Par Creek, Unnamed Tributary to Par Creek, and Stream 25.0L shall be submitted annually to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch (Corps) by December 31st each year until mitigation and restoration construction is complete as determined by the Corps. This report must prominently display the reference number NWS-2020-235-DOT.
  - i. An as-built planting and restoration report for the Par Creek mitigation site, and stream on-site riparian plantings, with as-built drawings of the on-site temporary stream and wetland impact replacement and enhancement areas shall be submitted upon completion of the project construction. These reports must be submitted to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch for review and approval and must prominently display the reference number NWS-2020-235-DOT.
  - j. Mitigation monitoring reports shall be submitted annually in Years 1 through 5 for the Par Creek mitigation site to the U.S. Army Corps of Engineers (Corps), Seattle District, Regulatory Branch by April 1<sup>st</sup> of each monitoring year. Year 1 monitoring will occur at least one year after completion of the mitigation site as determined by the Corps. All reports must prominently display the reference number NWS-2020-235-DOT.
  - k. Your responsibility to complete the required compensatory mitigation as set forth in Special Conditions “g” through “j” will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch.
  - l. You must obtain the Washington State Department of Ecology Coastal Zone Management (CZM) Consistency Determination approval prior to commencing any work. For further information on how to

obtain the CZM Determination, please contact: Ms. Penny Kelley at pkel461@ecy.wa.gov. You must comply with the conditions specified in CZM approval for your project.

**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.

\_\_\_\_\_  
WA St Dept of Transportation

\_\_\_\_\_  
(DATE)

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

\_\_\_\_\_  
Alexander L. Bullock  
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.

\_\_\_\_\_  
(TRANSFEREE)

\_\_\_\_\_  
(DATE)