

Memorandum

November 25, 2020

To: David Palazzi and Kristin Swenddal, Washington State Department of Natural Resources

From: Josh Jensen, Anchor QEA, LLC

cc: Jessica Côté and Kathy Ketteridge, Blue Coast Engineering
John Small, Anchor QEA, LLC

Re: Whiteman Cove Project Permitting Approach

Introduction

The Washington Department of Natural Resources (DNR) is currently evaluating four options for the Whiteman Cove Project (Project) to re-establish fish passage between Whiteman Cove and Case Inlet in Puget Sound. The purpose of the Project is to re-establish anadromous fish passage between Whiteman Cove and Case Inlet in Puget Sound to meet the requirements of the 2013 federal court injunction for fish, which requires fish passage for “all species of salmon at all life stages at all flows where the fish would naturally seek passage” (*United States v. Washington*).

Whiteman Cove was historically a barrier lagoon located on the southwestern shoreline of the Key Peninsula in Pierce County, Washington. It is separated from Case Inlet by a natural spit formed by net littoral drift to the north and feeder bluffs to the south. The historical opening to the cove, located at the northern end of the spit, was closed in 1962 to create a perched brackish water lagoon that was intended for the rearing of juvenile salmon. The impounded lagoon is approximately 25 acres in size. Two control structures maintain water surface elevations in the lagoon at an average of 13 feet mean lower low water or 8.9 feet North American Vertical Datum of 1988 (NAVD88). Minimal water exchange occurs through the control structures between the perched lagoon and Case Inlet. Fish passage is completely blocked by the control structures (WDFW 2012). Freshwater input to the cove comes primarily from a small intermittent stream (Whiteman Creek) at the eastern end of the cove that drains the approximately 1.7-square-mile upland watershed.

Four options to provide fish passage to the cove were considered and evaluated as part of a screening-level feasibility study conducted by the Anchor QEA team as part of this Project. The results of that analysis are documented in the Feasibility Report for the Project (Anchor QEA et al. 2020). The screening analysis provided information regarding fish passage, permitting, and site use challenges and opportunities for each of the proposed options. Following the screening analysis, all four options were moved forward into the feasibility study. This memorandum summarizes the results of the hydraulic analysis conducted for each proposed option described briefly below:

- Option 1: A new gated control structure at the current location of the DNR control structure

- Option 2: A new weir control structure at the historical opening to the north
- Option 3: An open channel at the historical opening of the cove with a bridge crossing
- Option 4: An open channel at the historical opening of the cove with road removal and rerouted access from the south

This memorandum summarizes the anticipated permit approach for the above conceptual design options and incorporates feedback from multi-agency meetings that occurred on April 2 and September 24, 2020 (Attachment 1). Whiteman Cove is associated with Puget Sound, which is defined as a navigable waterway and waters of the United States and is, therefore, subject to federal, state, and local regulations. The local lead agency is Pierce County Planning and Land Services (PALS). The following sections identify each of the environmental permits and approvals anticipated to be required for the Project, including regulatory triggers (actions that create the requirement to obtain a given permit), timeframes for issuance, application materials, and the general requirements associated with each permit and approval.

Permitting Approach

For the permitting approach, we recommend identifying and applying for applicable fish passage programmatic permits and exemptions to streamline the permit review process. At the multi-agency meetings, agency representatives identified several permits and approvals that could be selected to streamline the permit review process. For the option carried forward for permitting, this approach will need to be updated based on design refinements and the design consistency with the applicable permit criteria. It should be noted that, as proposed, Options 1 and 2 currently do not meet the Washington State Hydraulic Code criteria for fish passage per Washington Administrative Code (WAC) 220-660-190.2.a. Therefore, the Washington Department of Fish and Wildlife (WDFW) may not issue a Hydraulic Project Approval (HPA) for these options without design modifications to allow for fish passage occurring at a higher percentage of the time (based on tidal elevations).

Table 1 lists the permits or approvals anticipated for each of the four options. The estimated durations of the permits and approvals identified in this table are based on the amount of time for issuance of permits or approvals once the respective agency has made a determination that a complete application has been submitted.

Table 1
Anticipated Environmental Permits and Approvals

Approval or Permit	Agency	Trigger	Approximate Agency Review Timeframe ¹	Option 1	Option 2	Option 3	Option 4	Notes
Federal								
Nationwide Permit (NWP) 27	U.S. Army Corps of Engineers (USACE)	Aquatic habitat restoration, enhancement, and establishment activities	9 to 12 months	In-water work directly related to fish passage enhancement activities qualifies for an NWP 27.	Same as Option 1	Same as Option 1; bridge replacement, will also qualify for an NWP 27.	Same as Option 1	A Joint Aquatic Resources Permit Application (JARPA) will be prepared and submitted to the USACE for issuance of an NWP 27. In-water activities unrelated to fish passage enhancement activities may trigger an Individual Permit or additional NWPs.
National Historic Preservation Act (NHPA) Section 106 Concurrence	USACE in consultation with Washington Department of Archaeology and Historic Preservation	Projects with a federal nexus that have the potential to affect cultural, archaeological, and/or historical properties	9 to 12 months ²	NHPA Section 106 concurrence will be required for ground disturbing activities.	Same as Option 1	Same as Option 1	Same as Option 1	The Project includes construction related ground disturbance and structural modifications. As the federal lead agency, the USACE will consult with tribes and the State Historic Preservation Officer (SHPO) as part of the permit review process.

Approval or Permit	Agency	Trigger	Approximate Agency Review Timeframe ¹	Option 1	Option 2	Option 3	Option 4	Notes
Endangered Species Act (ESA) Section 7 Concurrence	USACE in consultation with National Marine Fisheries Service (NMFS)/U.S. Fish and Wildlife Service	Projects with a federal nexus occurring in the vicinity of any threatened or endangered species or destroy or adversely modify critical habitat	9 to 12 months*	ESA concurrence will be required for work with the potential to affect ESA-listed species and critical habitat.	Same as Option 1	Same as Option 1	Same as Option 1	The Project may qualify for a fish passage restoration programmatic consultation, which is expedited ESA review. This programmatic consultation covers restoration actions only. If the Project does not qualify for a fish passage restoration programmatic consultation, a biological evaluation or assessment will be submitted with the JARPA to initiate consultation.
Bridge Permit or Advance Approval	U.S. Coast Guard (USCG)	Any new construction, reconstruction, or modification of a bridge or causeway across U.S. waters per 33 Code of Federal Regulations 115	10 months	Not applicable	Bridge construction will require a Bridge Permit.	Bridge reconstruction will require a Bridge Permit.	Not applicable	A Bridge Permit application is submitted to the USCG concurrent with the JARPA. Note that USCG may issue an Advance Approval letter for work occurring over waterways with limited navigability per 33 Code of Federal Regulations Section 115.70.

Approval or Permit	Agency	Trigger	Approximate Agency Review Timeframe ¹	Option 1	Option 2	Option 3	Option 4	Notes
State								
Clean Water Act Section 401 Water Quality Certification (WQC)	Washington State Department of Ecology (Ecology)	Work within waters of the state that could affect water quality.	6 to 9 months	In-water work will trigger Section 401 review.	Same as Option 1	Same as Option 1	Same as Option 1	A JARPA will be sent to Ecology concurrent with the request to the USACE for an NWP 27. Clean Water Act Section 401 compliance is certified with conditions under the NWP 27. An individual WQC will not likely be required for the Project.
Coastal Zone Management Act (CZMA) Consistency	USACE in coordination with Ecology	Projects that contain a federal nexus proposed within any of Washington's 15 coastal counties	9 to 12 months*	A CZMA consistency review will be required.	Same as Option 1	Same as Option 1	Same as Option 1	CZMA consistency is certified under the NWP 27 unless an individual WQC is required by Ecology. If an individual WQC is required, a CZMA consistency form will be submitted to the USACE for consultation with Ecology.

Approval or Permit	Agency	Trigger	Approximate Agency Review Timeframe ¹	Option 1	Option 2	Option 3	Option 4	Notes
National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit (CSGP)	Ecology	Clearing, grading, or excavation activities that disturb an area of 1 acre or more and discharge stormwater to surface waters of the state	2 months; cannot apply for CSGP until State Environmental Policy Act (SEPA) process is complete	If this option is anticipated to disturb 1 acre or more then a CSGP will be required.	Same as Option 1	Same as Option 1	Same as Option 1	A Notice of Intent will be submitted electronically to Ecology for processing of a CSGP.
HPA	WDFW	Work that uses, diverts, obstructs, or changes the natural flow or bed of state waters (below mean higher high water)	45 days; cannot apply for HPA until SEPA process is complete	This option does not comply with Washington State Hydraulic Code fish passage criteria; therefore, an HPA may not be issued for this option.	Same as Option 1	A streamlined fish habitat enhancement HPA may apply.	Same as Option 3	For Options 3 and 4, an online application will be submitted via the WDFW Aquatic Protection Permitting System requesting a streamlined fish habitat enhancement HPA using the information prepared for the JARPA.
SEPA Determination	DNR or Pierce County (lead entity status has not been determined at this time).	Any proposal that requires a local agency decision	3 to 6 months	A SEPA determination will be required for this option.	Same as Option 1	Same as Option 1	Same as Option 1	SEPA documentation will be prepared and submitted to DNR or Pierce County.

Approval or Permit	Agency	Trigger	Approximate Agency Review Timeframe ¹	Option 1	Option 2	Option 3	Option 4	Notes
Local								
Shoreline Substantial Development Permit (SSDP) and Administrative Conditional Use Permit (ACUP)	PALS	Permitted uses within 200 feet of the shoreline	6 to 9 months	Habitat restoration is an allowed use in the Conservancy, Natural, and High-Intensity shoreline environments per Pierce County Code (PCC) Table 18S.60.030-1. An ACUP will be required for work within marine waters and cost of the Project.	Same as Option 1	Habitat restoration and public linear transportation facilities are allowed use in the Conservancy, Natural, and High-Intensity shoreline environments per PCC Table 18S.60.030-1.	Same as Option 3	A Shoreline Permit application will be submitted to PALS demonstrating compliance with the use and development policies per PCC 18S.040.
Critical Areas Ordinance Compliance	PALS	Work within designated critical areas or critical area buffers	6 to 9 months	Critical areas are present within the Project footprint and compliance will need to be demonstrated.	Same as Option 1	Same as Option 1	Same as Option 1	A Habitat Assessment Report addressing potential impacts to known critical areas will be prepared and submitted to PALS with the permit application materials.

Approval or Permit	Agency	Trigger	Approximate Agency Review Timeframe ¹	Option 1	Option 2	Option 3	Option 4	Notes
Floodplain Review Consistency	PALS	Work within a potential flood hazard area	6 to 9 months	Project activities are located within a potential flood hazard area.	Same as Option 1	Same as Option 1	Same as Option 1	A floodplain review application and supporting materials will be prepared and submitted to PALS.
Site Development Permit	PALS	Alteration or new construction regulated by the Pierce County Building Code (PCC 17A)	2 to 4 months	Construction activities will trigger a Site Development Permit.	Same as Option 1	Same as Option 1	Same as Option 1	A Site Development Permit application will be submitted with the final plan set to PALS.

Notes:

1. Timeframes are approximate and may change based on complexity or public perception.
2. Concurrent with the U.S. Army Corps of Engineers (USACE) review processes

Federal Permits and Approvals

Nationwide Permit 27

The U.S. Army Corps of Engineers (USACE) is anticipated to be the federal lead agency for the Project. Because all four options include in-water work related to fish passage enhancement activities, it is anticipated that all options will be consistent with the conditions for a Nationwide Permit (NWP) 27, which covers Rivers and Harbors Act Section 10 and Clean Water Act Section 404 actions. The NWP 27 process will streamline the permit review process compared to an Individual Permit due to shorter review timeframes and no public notice requirement. The timeframe for the NWP 27 review is anticipated to be approximately 9 to 12 months from submittal of a complete application determination.

At the multi-agency meetings, the USACE said that constructing a bridge (under Options 2 or 3) would still likely qualify as a restoration action because it is being constructed to support fish passage. If dredging and/or additional in-water structure improvements are proposed, or if wetland or stream impacts are anticipated as part of the right-of-way development under Option 4, the Project may require additional NWPs (such as the NWP 14 for linear transportation) or an Individual Permit. The USACE also indicated that the Project may qualify for credit under Regulatory Guidance Letter 18-01 negating the need for mitigation of any adverse impact habitat as a result of the barrier removal (USACE 2018).

For potential wetland or stream impacts related to Option 4, the USACE requested early involvement to evaluate how the Project may self-mitigate for anticipated impacts, or if additional mitigation options may be warranted due to the different habitat types involved.

National Historic Preservation Act Section 106 Concurrence

The USACE is the lead agency for consultation under Section 106 of the National Historic Preservation Act. Section 106 requires that the federal agency determine whether the Project will have an adverse effect on historic properties, including archaeological resources, historic structures, and Traditional Cultural Properties. The Section 106 process requires identification of the area of potential effects (APE), evaluation of potential historic properties in the APE, and a determination of Project effects. Consultation with tribes and the State Historic Preservation Officer (SHPO) occurs as part of Section 106 consultation. Typically, the USACE requires the applicant to provide documentation that describes the APE, identifies and evaluates historic properties, and describes Project effects, which the agency then shares with tribes and the SHPO. The review process will occur concurrent with the USACE permit review process and is anticipated to take approximately 9 to 12 months to complete. There is no public notice process associated with this approval.

Endangered Species Act Section 7 Concurrence

The USACE is the lead agency for Endangered Species Act (ESA) Section 7 consultation in coordination with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service. The Project proposes in-water activities that have the potential to affect ESA-listed species or critical habitat. The Project may qualify for a fish passage restoration programmatic permit, which will expedite the review process. To avoid or minimize adverse impacts to ESA-listed species, best management practices and conservation measures will be incorporated into the Project definition, including working within the in-water work window when ESA-listed fish species are less likely to be present. The ESA consultation process will occur concurrent with NWP 27 review and is anticipated to take approximately 9 to 12 months to complete. There is no public notice process associated with this approval.

Bridge Permit or Advance Approval

As part of the USACE consultation process, the U.S. Coast Guard (USCG) will be contacted to comment on the Project for review of potential navigation impacts and the potential need for a Bridge Permit or Advance Approval. The purpose of the Bridge Permit is to ensure safety of the boating public and approve the location and clearances of bridges. This permit is required for any new construction, reconstruction, or modification of a bridge or causeway across waters of the United States. Due to anticipated limited navigability of the restored area, the USCG may choose to issue an Advance Approval letter in lieu of a Bridge Permit. This permit or approval may apply to Options 2 or 3 where a bridge structure is proposed. An application for a Bridge Permit will be submitted to the USCG District Commander concurrent with the Joint Aquatic Resources Permit Application (JARPA) materials for review and approval. The review timeframe for this permit is approximately 10 months from submittal of a complete application. There is a mandatory 30-day public notice period for this permit.

State Permits and Approvals

Clean Water Act Section 401 Water Quality Certification

The Washington State Department of Ecology (Ecology) is the review agency for the Clean Water Act Section 401 Water Quality Certification (WQC). Ecology reviews all projects requiring work within waters of the state for consistency with the Washington State Water Quality Standards per WAC Chapter 173-201A. The WQC is "certified subject to conditions" under the NWP (Ecology 2017); therefore, an individual WQC is not required unless otherwise determined through consultation with Ecology.

Coastal Zone Management Act Consistency

The USACE is the lead agency for Coastal Zone Management Act (CZMA) concurrence in coordination with Ecology. CZMA consistency is required for projects that contain a federal nexus proposed within any of Washington's 15 coastal counties. CZMA consistency is certified under the NWP 27 so a separate application is not required unless Ecology determines that an individual WQC is required for the Project. Ecology issues a determination upon receipt of all other permits and approvals.

National Pollutant Discharge Elimination System Construction Stormwater General Permit

Ecology is the review agency for the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit (CSGP). The CSGP is required for projects that include clearing, grading, or excavation activities that disturb an area of 1 acre or more and discharge stormwater to surface waters of the state. To obtain this permit, a Notice of Intent form is prepared and submitted electronically to Ecology after a SEPA determination is issued. The review timeframe for this permit is approximately 2 months. There is a 30-day public notice timeframe that is initiated after a complete application is determined. Additionally, the application requires publication in a local newspaper.

Hydraulic Project Approval

WDFW is the review agency for the HPA. A WDFW-issued HPA is required for construction projects in state waters per the Washington State Hydraulic Code (Revised Code of Washington 77.55). Options 1 and 2 may not be viable as they do not meet the Washington Hydraulic Code fish passage criteria per WAC 220-660-190.2.a. Therefore, an HPA may not be issued for Options 1 or 2, if selected (see Attachment 1).

Best management practices and construction techniques are typically required as part of the HPA process to mitigate the effects on fish and wildlife species and habitat during construction. At the April 2020 multi-agency meeting, WDFW said that the Project may qualify for a streamlined fish habitat enhancement HPA if it is consistent with the WDFW Streamlined Fish Habitat Enhancement Process Interim Guidance (2017). If the Project qualifies for the streamlined fish enhancement HPA, it will shorten the statutory permit review timeframe of 45 days. There is no public notice process for this approval.

Note that if any streams are impacted as part of the right-of-way development under Option 4, a standard HPA may be required.

State Environmental Policy Act Determination

DNR is the lead review agency for State Environmental Policy Act (SEPA) compliance. SEPA compliance is required for any proposal that requires a local agency decision. If the Project qualifies for a Determination of Non-Significance or Mitigated Determination of Non-Significance, a SEPA Checklist and supporting materials will be completed and submitted to DNR for review. The review timeframe for this approval is anticipated to be approximately 3 to 6 months from complete application submittal. There is a 30-day public notice period associated with the permit review process. Note that a SEPA Environmental Impact Statement (EIS) may be required if the Project is determined to have a probable significant adverse environmental impact, or if there is a Determination of Significance. If a SEPA EIS is required, then the SEPA process as outlined in WAC Chapter 197-11 will be followed. This process includes scoping, public meetings, and documentation requirements.

At the April 2020 multi-agency meeting, it was discussed that DNR may choose to defer to PALS as the SEPA lead agency if the agencies determine that combining elements of SEPA, Shoreline Master Program (SMP) compliance, and Critical Areas Ordinance requirements will result in a more efficient permit review process.

Local Permits and Approvals

Shoreline Substantial Development Permit and/or Administrative Conditional Use Permit

PALS is the local review agency for Pierce County SMP compliance as codified per Pierce County Code (PCC) Title 18S. The Project is located primarily within an SMP-designated Conservancy shoreline environment, with portions of the Project area designated as Natural (at the northernmost tip of the spit) and High-Intensity (at the north end of the existing bridge). According to the SMP, habitat restoration and public linear transportation facilities are allowed uses per PCC Table 18S.60.030-1. Therefore, these uses will require a Shoreline Substantial Development Permit (SSDP). Due to work proposed in marine waters, and cost of the Project, PALS said they may also issue an Administrative Conditional Use Permit (ACUP) for the Project.

A Shoreline Permit application will be completed and submitted to PALS via their online permit portal. The application will demonstrate the Project's consistency with Pierce County's use and development policies per PCC Title 18S.40. The review timeframe for an SSDP/ACUP is 6 to 9 months from complete application submittal. There is a 30-day public notice period associated with the permit review process. Once PALS issues a decision, it is submitted to Ecology for approval, which typically takes an additional 30 days to issue the final SSDP.

Critical Areas Ordinance Compliance

PALS requires Critical Areas Ordinance review for any projects occurring within designated critical areas. For these projects, applicants are required to demonstrate no net loss in ecological function through a Habitat Assessment Report. At the April 2020 multi-agency meeting, PALS said they will also require a wetland analysis report to be prepared and submitted with the Habitat Assessment Report. The Habitat Assessment Report will be prepared and submitted to PALS with the SSDP application. Critical Areas Ordinance consistency review will occur concurrent with SSDP review, which is anticipated to take 6 to 9 months.

Floodplain Review Consistency

PALS requires floodplain review for projects that occur within a potential flood hazard area. An application for floodplain review consistency is prepared and submitted to PALS with supporting materials, which may include site development plans, a flood boundary delineation survey, a zero-rise analysis, and a Federal Emergency Management Agency (FEMA) elevation certificate (this may only apply for new, in-water structural elements under Options 2 and 3). The most current version of the FEMA elevation certificate must be completed by a professional land surveyor, currently licensed in the State of Washington, and kept on file with the Pierce County Planning and Public Works Department. Floodplain review consistency will occur concurrent with SSDP review, which is anticipated to take 6 to 9 months.

Site Development Permit

PALS administers Site Development Permits for alterations or new construction. A pre-submittal meeting with PALS is typically required for the Site Development Permit. Review and approval of any filling or excavation activities proposed for the Project will also occur under this permit. The Site Development Permit is typically applied for at later design phases, when the design is more complete. The review timeframe for this permit is typically 2 to 4 months, depending on complexity of the design. There is no public notice process associated with this permit. A Building Permit may be required for the bridge construction in Options 2 and 3 or for structures that may be required for roadwork in Option 4.

Other Local Permits and Approvals

Other permits and approvals may be required depending on the final option that is carried forward and associated design refinements. It is anticipated that these permits will be applied for as needed prior to or during construction by DNR or the contractor and may include, but are not limited to, a General Right-of-Way Permit, noise variance(s), and electrical or mechanical permits, if required.

Schedule

Permitting timeframes generally correspond with project complexity, which can be affected by agency or tribal negotiation or increased public scrutiny. The timeframes included in this memorandum are based on previous regulatory experience and best professional judgment. These timeframes are subject to change and could be impacted by post-submittal design updates or agency coordination. General timeframes for obtaining permits and approvals are described in Table 1.

The total timeframe for obtaining permits and approvals for any of the options being considered for the Project will be approximately 9 to 12 months. Options 1 and 2 may not be permitted under the Washington State Hydraulic Code because they inherently limit the passage of fish at all life stages. There are no existing fishway design examples in Puget Sound that would mitigate this condition. In-water construction is generally subject to agency-approved in-water work windows established for specific Project areas. If work is proposed to occur outside of the allowable in-water work window, this will need to be requested in the permit application materials. Recent consultations for USACE NWP's on other projects in Puget Sound have been extending past the more conservative 12-month timeframe; therefore, we recommend that DNR consider the longer duration for planning purposes.

References

Anchor QEA, Blue Coast Engineering, and KPFF Consulting Engineers, 2020 (in progress). *Whiteman Cove Feasibility Report*. Prepared for the Washington State Department of Natural Resources.

Ecology (Washington State Department of Ecology), 2017. Letter to: Colonel John G. Buck, Seattle District, Corps of Engineers. Regarding: Revised State of Washington decisions on Section 401 Water Quality Certification in response to Department of the Army, Corps of Engineers "Notice of Reissuance of Nationwide Permits," published in the Federal Register January 6, 2017.

United States v. Washington. No. C70-9213, W.D. Wash. Mar. 29, 2013.

USACE (U.S. Army Corps of Engineers), 2018. Corps Regulatory Guidance Letter No. 18-01. Re: Determination of Compensatory mitigation Credits for the Removal of Obsolete Dams and Other Structures from Rivers and Streams. September 25, 2018.

WDFW (Washington Department of Fish and Wildlife), 2012. WDFW Fish Passage and Diversion Screening Inventory Database for Site 105 K041717a (Whiteman Cove). Review Date: June 12, 2012.

WDFW, 2017. Streamlined Fish Habitat Enhancement Process (FHEP) Interim Guidance. December 28.

Attachment 1

April 2 and September 24, 2020

Multi-Agency Meeting Notes

Meeting Minutes

Restoration Concepts Early Agency Consultation

Whiteman Cove Restoration Project

10:00 AM, Thursday, April 2, 2020, WebEx (teleconference)

Attendees

David Palazzi	Washington State Department of Natural Resources
Kristin Swenddal	Washington State Department of Natural Resources
Halie Endicott	U.S. Army Corps of Engineers
Jim Muck	U.S. Fish and Wildlife Service
Allison Cook	Washington Department of Fish and Wildlife
Doris Small	Washington Department of Fish and Wildlife
Pad Smith	Washington Department of Fish and Wildlife
Melissa Erkel	Washington Department of Fish and Wildlife
Dave Risvold	Pierce County
Scott Sissons	Pierce County
Jessica Cote	Blue Coast Engineering
Kathy Ketteridge	Blue Coast Engineering
Traci Sanderson	Blue Coast Engineering
Pat Sloan	KPFF
Jason Lee	KPFF
John Small	Anchor QEA, LLC
Josh Jensen	Anchor QEA, LLC

Meeting Notes

Background and Site Overview

- The Whiteman Cove Restoration Project (Project) is a Washington State Department of Natural Resources (WDNR)-funded fish passage restoration at Whiteman Cove. The Project is being proposed in response to the recent injunction requiring the state to provide fish passage to salmonids at all life stages. WDNR is currently conducting a Feasibility Study to evaluate different options to provide fish passage in this area.
- The existing Whiteman Cove is currently closed off to the bay by control structures that function as weirs. The parcel near the historical mouth of Whiteman Cove is owned by Seattle Shellfish, which includes an active geoduck farm that is seen as a high-value parcel. WDNR manages the

state-owned lands in the area at the historical mouth of Whiteman Cove, including the portion comprising the existing control structure in that area. The YMCA owns a large portion of the cove to the south, including the second control structure located further south along the embankment, and Camp Coleman, a popular destination. The YMCA control structure is currently functional; the WDNR control structure is not as functional. Further east, inside the cove, are multiple private properties.

- The east end of the cove is shallow, around 2 to 3 feet deep. There is a creek input into the cove with generally low flow, so there is limited freshwater input into the cove.
- Pierce County (the County) asked if there has been outreach to the private property owners. WDNR has held two community meetings and an additional community meeting held by the County that WDNR and the consultant team attended over the past year. David Palazzi sends out regular updates to the community listserv related to the Project.
- Along the west side of the cove, the littoral drift flows north to south.

Options

- Three design options are being evaluated:
 1. Open channel (unconfined or confined bed—the latter being similar to the weir option)
 2. Culvert or tide gate designed to open at certain tidal cycles
 3. Weir

Options Locations

- The Project team is currently evaluating two locations: 1) the open channel and weir options would be at or near the northern, historical configuration; or 2) the tide gate and culvert options would be to the west where the WDNR control structure is currently. There is a third potential location for the open channel option to the south where the YMCA control structure is located. However, an open channel in that third potential location may be impacted by littoral drift and would need to be further evaluated.
- It should be noted that most of the cove would be empty during low tide.
- The roadway along the outside of the cove is an important access route to the YMCA, so some temporary roadway access may be required prior to construction to facilitate access to the YMCA during potential construction closures.

Discussion/Permitting Considerations

- The Washington Department of Fish and Wildlife (WDFW) said they would send the WDFW Streamlined Fish Habitat Enhancement Process interim guidance to Anchor QEA to distribute to the team.

- The County said that, from a shoreline permitting perspective, a Shoreline Substantial Development Permit is likely. If the Project qualifies for the WDFW exemption criteria per Revised Code of Washington (RCW) 43.21C.0382 and RCW 77.55.181, the Project may not require local permits. The County said that the complexity for the permitting process will likely come out of the public comment process.
- WDFW said that, if the Project includes more than providing fish passage to Whiteman Cove and construction of the bridge, it is unlikely that the Project will qualify for the WDFW exemption. More information would be required on the proposed design to make that determination.
- The U.S. Army Corps of Engineers suggested that the Project would fit under a Nationwide Permit 27 for habitat restoration. If dredging and structure improvements are proposed, it may require multiple Nationwide Permits or an Individual Permit. Reconstructing a bridge would likely still qualify under restoration activities because it is being constructed to support fish passage. If the tide is designed for fish passage, it may also qualify as a restoration project, assuming it meets guidance for acceptable fish passage structure. It is unlikely that removal of the sheetpile wall and berm would be permitted as dam removal.
- The U.S. Fish and Wildlife Service (USFWS) said that the Project may qualify for a fish passage restoration programmatic, which is expedited Endangered Species Act consultation. This would be for restoration only. WDFW said that they would need to evaluate further whether allowing fish passage at certain times would qualify the Project as a fish passage project.
- USFWS said that, under the 2017 National Marine Fisheries Service Biological Opinion and currently revised guidance, fish passage projects can now include other activities as long as fish passage is the main component of the Project. For the tide gate/weir options, going from no fish passage to some is good; however, USFWS would prefer the open channel option to realize as much restoration as possible.
- WDFW said that it will be difficult trying to allow fish passage at all tidal elevations while accommodating surrounding property owners' needs. To provide fish passage at most tidal elevations, the design may require a long series of weirs to adequate elevations, which leaves the north channel option as the only feasible alternative. Typically, fish passage is not required at all elevations, but at elevations typical to the area.
- WDFW said they have recently completed flood gate projects off of the Nooksack River that were considered fish passage projects. The intent was to improve fish passage, recognizing that there would never be 100% fish passage, but an improvement to existing conditions.
- WDFW requested that Pad Smith (WDFW) work with the design team to make sure the design meets fish passage requirements.

- WDFW said that the overarching intent of the injunction is to put structures in or remove structures to allow more natural processes to occur.
- WDFW said that lagoon deepening would add complexity to the Project and likely require mitigation. WDNR suggested that deepening is not a requirement for fish passage under the injunction and would be considered as a separate project.
- The County said that they will require a wetland analysis report and habitat assessment study consistent with the Pierce County Critical Areas Code in Title 18E. Depending on the final project design, there may not be fees associated with that approval.
- The County said it is best to coordinate early and try to combine elements of State Environmental Protection Agency (SEPA), Shoreline, and Critical Areas requirements where possible for the most efficient process.
- WDNR said they are hoping to have a preferred alternative by June 2020 based on the Feasibility Study.
- WDNR said they have been meeting regularly with the Squaxin Tribe and will continue to keep them in the loop as things progress.

Meeting Notes

Agency Coordination Meeting

Whiteman Cove Project

1:00 PM, Thursday, September 24, 2020; WebEx (teleconference)

Attendees

Halie Endicott	U.S. Army Corps of Engineers
Jim Muck	U.S. Fish and Wildlife Service
Allison Cook	Washington Department of Fish and Wildlife
Doris Small	Washington Department of Fish and Wildlife
Gwen Lentes	Washington Department of Fish and Wildlife
Pad Smith	Washington Department of Fish and Wildlife
Dave Risvold	Pierce County
Scott Sissons	Pierce County
Dave Palazzi	Washington State Department of Natural Resources
Kristin Swendall	Washington State Department of Natural Resources
John Small	Anchor QEA
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Meeting Notes

Introduction

- The purpose of the meeting is to provide additional information on the four options being evaluated by the Washington State Department of Natural Resources (WDNR) for the Whiteman Cove Project (Project). Since the April 2020 agency meeting, the WDNR team has made further progress on the feasibility study, with additional details related to design, fish passage, and hydraulics and hydrology for each option. All four options are still being considered as part of the feasibility study. WDNR is seeking agency feedback on the options to inform discussions on choosing a preferred option

Project Options

- Option 1: Control Structure with Gate/Culvert. This option includes replacing the existing control structure with a similar structure that provided tidal exchange to the cove over a set range of tidal elevations. The option would allow fish passage to occur through one or two culverts connecting Whiteman Cove to Case Inlet at tidal elevations at or higher than approximately 13 feet mean lower low water (MLLW), which is the mean higher high water elevation at the site. It is expected that this option would require ongoing maintenance due to woody debris and sediment that comes into area, which would likely render a gated open channel option unsustainable. Therefore, a piped system at this location is required.
- Option 2: Bridge with Weir, 40-foot Single Span. This option is located to the north at the historical cove opening and would provide a bridge over a 40-foot concrete, rock, or other hard sill (weir) with a crest elevation of 13 feet MLLW. This option would also provide tidal exchange above 13 feet MLLW. The example photograph (in the presentation) is located at Keyport Lagoon. This example is slightly smaller than 40 feet and has a concrete sill under the bridge.
- Option 3: Open-channel with 100-foot Single Span Bridge. Option 3 is located to the north at the historical cove opening and would be set at thalweg elevation at 7 feet MLLW, allowing tidal exchange at all tides above 7 feet. This option would allow for more complex channel formations with potential for fish passage at lower elevations than Options 1 or 2.
- Option 4: Open-channel with No Bridge, Road from the South. Option 4 would be the same thalweg elevation as Option 3. This option would be more open than Option 3 and would not only allow smaller channels to form, but also allow opportunity for the inlet itself to move around and change because WDNR would not need to maintain road access.

Project Options Discussion

- The U.S. Fish and Wildlife Service (USFWS) asked what kind of road relocation impacts there might be under Option 4. Anchor QEA said there may be limited wetland or wetland buffer impacts in that area; a full delineation will be completed upon selection of a preferred option. The U.S. Army Corps of Engineers (Corps) said they would have to look into the ability for using the inlet restoration that occurs as part of Option 4 as mitigation for wetland impacts associated with road relocation (if any) because of the different habitat types. USFWS said that the road relocation will need further evaluation for the Project to comply with the programmatic Endangered Species Act (ESA) consultation process requirements.
- Washington Department of Fish and Wildlife (WDFW) asked how the preferred option will be selected. WDNR said they would like to select an option that works for everybody, which may not be possible. So, that means the team will also be looking at cost and other factors as well. WDFW said they support Option 4 with full restoration but understand the constraints.

- Anchor QEA said it is the Project team's intent to provide a transparent approach to reviewing the options, so the alternatives moved forward for environmental review have already been vetted.
- Blue Coast Engineering (Blue Coast) reviewed the histogram of tidal heights for the Project site and it was noted that higher tidal elevations occur more frequently than lower tidal elevations over the course of a year. The potential for fish passage for Options 1 and 2 based on frequency of occurrence of tidal heights at the site indicates approximately 25 percent of the time it would be fish passable, compared to Options 3 and 4, which would provide fish passage approximately 65 to 70 percent of the time.
- WDFW asked about the options relative to salinity, dissolved oxygen, and other water quality factors. Blue Coast has information and could provide preliminary water quality review results. Based on existing conditions information, the cove is a warmer temperature than Case Inlet. For Options 3 and 4, it is likely that the cove would flush out at each tide cycle because it is higher in elevation.

Permitting Strategy Overview/Discussion

- Pierce County said that under the Shoreline Management Act, these options are likely to fall into the restoration category. If the principal use is restoration, the Project would qualify for a Shoreline Substantial Development Permit. However, because of cost and the location in marine waters, an administrative conditional use permit may also be required. Other activities such as excavation and grading and transportation would need to comply with additional criteria. Wetland and fish and wildlife review will be required for all options. Additional review could be triggered if a wetland or fish and wildlife buffer had to be reduced below the allowances of Pierce County Code Title 18E. If that proved to be the case (and there has been no indication that it will), a shoreline variance may be required.
- WDFW recommended that WDNR request a standard Hydraulic Project Approval (HPA) because there are a lot of elements to the Project requiring local review.
- Pierce County and WDFW said that the Project would have to be full restoration to qualify for the Streamlined Fish Habitat Enhancement Process, which would exempt local review, too. It is more likely that Option 4 would qualify, but not others. Pierce County said it would be similar for the shoreline permit process.
- WDFW said that Options 1 and 2 would not comply with fish passage since they do not "allow fish to move freely through them at all flows when fish are expected to move" (WAC 220-660-190.2.a). The Keyport Lagoon example experienced similar issues for fish passage and temperature issues that impeded access. Because Options 1 and 2 are inconsistent with the hydraulic code fish passage requirements, WDFW would not be able to issue an HPA. WDFW said that Options 3 and 4 are likely to require a standard HPA as currently proposed.

- USFWS said that the agency is currently finalizing the renewed Biological Opinion for the fish passage and habitat restoration programmatic ESA consultation by the end of the year. Under the 2008 programmatic, the Project has to be fish passable at all life stages and include habitat restoration. The updated Biological Opinion would apply a broader definition of fish passage, allowing various levels of fish passage if it is otherwise blocked. The Corps said that all four options would qualify under the Nationwide Permit 27 for restoration activities if they are consistent with the ESA habitat restoration programmatic criteria.
- The Corps noted that Option 1 is likely to require monitoring of sediment and debris at the inlet and removal of accumulated material to prevent blockage of the inlet.
- The Corps said that the group previously discussed the potential for dock maintenance work at the YMCA. WDNR confirmed that any dock maintenance would be permitted separately by the YMCA. The Corps said that if WDNR is proposing other projects to be handled under the fish passage and habitat restoration programmatic, then other project work (docks, dredging, etc.) would not qualify. The Corps could potentially permit the Project under a Nationwide Permit (NWP) 27 for restoration work, and other Corps permits if needed, but could not piecemeal ESA coverage. It is important to look at the Project holistically for ESA coverage. It appears that any of the projects could meet NWP 27 conditions for habitat restoration.
- The Corps will defer to WDFW regarding fish passage criteria compliance. The Corps will require a monitoring plan for the Project as part of the permit conditions. Monitoring may be difficult because it may need to be extended due to continued potential blockage and fish passage impacts from sedimentation, woody debris, or otherwise (Option 1). For Option 2, the weir structure could cause concern because it may be considered hard armoring due to construction of rock/concrete weir under the bridge. The Corps will want to know in advance if Option 2 selected to make sure still meets programmatic requirements.
- WDFW said that since this is an injunction project, it needs to clearly meet the intent of stream simulation or better, which based on the group's understanding of the injunction, most likely makes Options 1 and 2 unviable as alternatives to meet the requirements of the injunction. WDFW noted that the standards of their permit authority are different than the requirements of the injunction, but that it is likely that the tribes will object to the state issuing a permit if both standards are not met.
- The Corps asked about potential upland wetland impacts from the road relocation proposed under Option 4. Anchor QEA said that the team has completed a desktop survey and has identified the potential for wetland buffer impacts. These impacts would be unavoidable if the road relocation is limited to County right-of-way. The Corps said perhaps opening up the channel under Option 4 could mitigate for wetland buffer impacts due to freshwater and saltwater interface. WDFW said that they do not want to see potential upland wetland impacts dissuade the group from choosing Option 4 for full restoration of the estuary.

- The Corps said Option 4 is the best option for fish passage and most environmentally beneficial so there may be some opportunity to offset upland impacts depending on how the benefits are characterized. Because the cove is estuarine with some freshwater input, a case could possibly be made regarding how it is all connected and fish passage improvements also benefit freshwater habitat in the surrounding area. The Corps said that if Option 4 is selected, it would be good to loop in senior review staff to provide guidance from the beginning, so things do not get too complicated down the road.