



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

January 25, 2010

Carol Brown
Lower Elwha Klallam Tribe
Community Development
2851 Lower Elwha Road
Port Angeles, WA 98363

RE: Administrative Order No. 7328 to permanently fill 0.67 acre of isolated wetlands to construct Lower Elwha Valley Access Road – Kacee Way Improvement and Olympic Discovery Trail County, Washington.

Dear Ms. Brown:

The Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application on January 12, 2010, requesting an Administrative Order for proposed work in isolated wetlands. Ecology has determined that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Chapter 90.48 RCW and other applicable requirements of state law.

This approval is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Rick Mraz at (360) 407- 6221. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Perry J Lund, Unit Manager
Southwest Regional Office
Shorelands and Environmental Assistance Program

PL:dn
Enclosure

By Registered Mail RB 252 946 055 US

cc: Jason Shappart, Meridian Environmental, Inc.
Greg Ballard, Clallam County DCD



e-cc: ECYFEDPERMITS
Lori Ochoa, Ecology/SWRO
Loree' Randall, Ecology/Headquarters
Rick Mraz, Ecology/SWRO
Deborah Cornett, Ecology/SWRO

DEPARTMENT OF ECOLOGY

IN THE MATTER OF THE REQUEST BY) ORDER NO. 7328
The Lower Elwha Klallam Tribe)
FOR AN ADMINISTRATIVE ORDER TO)
CONDUCT WORK IN AN ISOLATED WETLAND)

To: Lower Elwha Klallam Tribe
Carol Brown
Community Development
2851 Lower Elwha Road
Port Angeles, WA 98363

This is an Administrative Order requiring the Lower Elwha Klallam Tribe to comply with Chapter 90.48 RCW and the rules and regulations of the Department of Ecology (Ecology) by taking certain actions which are described below. RCW 90.48.120(1) authorizes Ecology to issue Administrative Orders requiring compliance whenever it determines that a person has violated or creates a substantial potential to violate any provision of Chapter 90.48 RCW.

Ecology received the Lower Elwha Klallam Tribe Joint Aquatic Resources Permit Application (JARPA) on January 12, 2010, requesting an Administrative Order to impact 0.67 acre of isolated wetlands to construct the Lower Elwha Valley Access Road – Kacee Way Improvement and Olympic Discovery Trail Construction in Clallam County. The site is located at Kacee Way, Clallam County, Washington; Section 2, Township 30, Range 7 WWM.

This Administrative Order authorizes 0.67 acre of Category II isolated wetland impacts at the project location. The mitigation site exists on Lower Elwha Klallam reservation land. The usual mitigation instruments such as regularly scheduled monitoring, enforcement of conditions and deed restriction are not appropriate for this project. Ecology has engaged in early coordination with the Lower Elwha Klallam Tribe to obtain reasonable assurance that the mitigation project referenced in this order will be complete, effective and protected in perpetuity. The results of that coordination are represented as conditions of this order.

Mitigation for this proposal will consist of removal of berms in the lower Elwha River floodplain to restore natural floodplain function to an 82-acre area. The 82-acre site is currently composed of a complex of forested uplands and wetland patches, with ponded, scrub-shrub, and emergent components. Although the site is within the lower Elwha River floodplain, high flow events are largely diverted away from the area by the hatchery outfall berms, reducing the extent and duration of surface water inundation of the site. Reconnection of the 82-acre area to the active floodplain will enhance existing wetland hydrology, result in formation of additional wetland area, provide juvenile anadromous fish access to highly productive off-channel rearing habitats, and improve habitat for amphibians, waterfowl and other water dependant birds.

Road project mitigation funding represents 37 percent of the total berm removal project cost to restore natural floodplain function. Therefore, 30 acres are ascribed as mitigation through prorating (i.e., 82 acres x 0.37 percent), equaling a 45:1 mitigation ratio.

For purposes of this Order, the term "Applicant" shall mean Lower Elwha Klallam Tribe and its agents, assigns, and contractors.

In view of the foregoing and in accordance with RCW 90.48.120(1):

IT IS ORDERED that the Applicant shall comply with the following:

A. General Conditions:

1. The Applicant shall construct and operate the project in a manner consistent with the project description contained in the JARPA and the Kacee Way design project sheets #1 and #2 (date January 11, 2010), received by Ecology on January 12, 2010, or as otherwise approved by Ecology.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest Regional Office, Attn: Rick Mraz, SEA Program, P.O. Box 47775, Olympia, WA 98504-7775. Any submittals shall reference Order No. 7328.
3. The Applicant shall provide access to the project site upon request by Ecology. Access to the mitigation site shall be coordinated with and arranged by permission of the Lower Elwha Klallam Tribe.
4. This Order does not exempt and is provisional upon compliance with applicable statutes and codes administered by federal, state, and local agencies.
5. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors.
6. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
7. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project.

B. Notification Requirements:

1. The Applicant shall provide written notification (FAX, e-mail or mail) to Ecology's Southwest Regional Office Federal Project Coordinator in accordance with condition A.2 above for the following activities:

- a. At least ten (10) days prior to a pre-construction meeting.
- b. At least ten (10) days prior to the onset of any work on site.
- c. At least ten (10) days prior to the onset of in-water work, including wetlands
- d. Immediately following a violation of the state water quality standards or any condition of this Order.
- e. Within fourteen (14) days after completion of construction.

C. Wetland Compensatory Mitigation Conditions:

1. Most of the project mitigation occurs on Lower Elwha Klallam reservation land. Some of the usual mitigation instruments such as a deed restriction are not feasible for this project. Ecology has engaged in early coordination with the Lower Elwha Klallam Tribe to obtain reasonable assurance that the mitigation project referenced in this order will be complete, effective and protected in perpetuity. The results of that coordination are represented as conditions of this order.
2. The Applicant shall mitigate wetland impacts as described in the plan entitled *Elwha Valley Access Road Project; Kacee Way Segment – Wetland Mitigation Plan*, dated January 12, 2010, except as modified in this Order or revised and approved by Ecology.
3. The initial work to remove the berms and establish the mitigation site was completed in August 2009. As such, the mitigation is, in part, in advance of the project impacts. One of the primary objectives of the mitigation project was to reestablish floodplain functions on an 82-acre area east of the Elwha River. Based on photos taken late in 2009, this objective has been achieved.
4. The Applicant shall submit any changes to the mitigation plan in writing to Ecology (per condition A.2. above) for review and approval before any additional work begins or when problems occur during construction requiring plan changes.
5. To ensure proper installation, the Applicant's wetland professional should supervise and inspect all future mitigation site activities.

Implementation

6. The Applicant shall ensure that all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers and above the 100-year floodplain.
7. If seeding is used as a temporary erosion control BMP, it should be a wetland mix consisting of native, annual, non-invasive plant species.
8. Ecology is in receipt of a Lower Elwha Tribe Resolution (#44-09) that asserts the Tribe has committed to the removal of the Outfall Berm, filling of the Hatchery Ditch and revegetation of the area during the 2009 construction season.

Monitoring and Maintenance:

9. The Applicant shall monitor the mitigation site and share this information with Ecology. No formal monitoring report is required. The Applicant shall implement the mitigation plan's contingency measures if goals, objectives, and performance standards are not being met.

10. Prior to implementing any unidentified contingency measures, the Applicant shall consult with Ecology.
11. Ecology shall coordinate with the Lower Elwha Klallam Tribe for annual inspections during a 10-year period (from the date of this order) or until mitigation success has been achieved.

Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the “date of receipt” of this document. Filing means actual receipt by the Board during regular office hours
- Serve your appeal on the Department of Ecology within 30 days of the “date of receipt” of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). “Date of receipt” is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

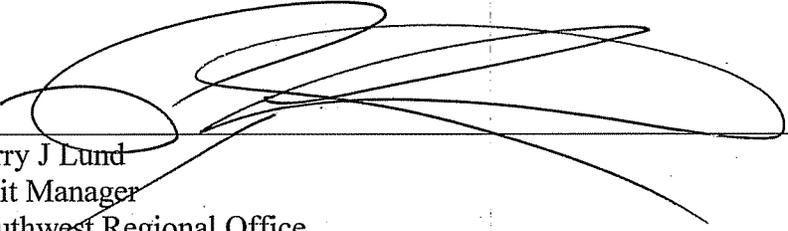
Rick Mraz
Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia, WA 98504-7775

*For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>*

*To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>*

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

DATED this 25 day of JANUARY, 2010, at Lacey, Washington.



Perry J Lund
Unit Manager
Southwest Regional Office
Shorelands and Environmental Assistance Program

