



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

July 20, 2007

**REGISTERED MAIL**  
**RB 670 439 033 US**

Skagit County Dike District No. 12  
1317 South Anacortes Street  
Burlington, WA 98233

RE: Water Quality Certification Order #4650 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers (Corps) Reference #200700428, Skagit County Dike District No. 12: No Name Slough Habitat and Drainage Improvements, Rural Skagit County, Washington

Ladies and Gentlemen:

On April 9, 2007, the Washington State Department of Ecology (Ecology) received a Joint Aquatic Resources Permit Application (JARPA) from Skagit County Dike District No. 12 (Dike District No. 12). A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on June 27, 2007.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the original JARPA submitted on April 9, 2007, and in the public notice (June 27, 2007) complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

On June 27, 2007, Ecology received a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP) form from Dike District No. 12 for this project. Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with Dike District No. 12's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon Dike District No. 12's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.



If you have any questions, please contact Cynthia Walcker, Federal Permit Coordinator at (425) 649-4318 or [cynt461@ecy.wa.gov](mailto:cynt461@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Geoff Tallent  
Northwest Regional Office  
Shorelands and Environmental Assistance Program

GT:csw:cja

Enclosure

cc: Randel Perry, U.S. Army Corps of Engineers  
Tom Slocum, P.E.  
Emily Ellen Egbers  
Eric B. Egbers

e-cc: Penny Keys – Ecology, HQ  
Loree' Randall – Ecology, HQ  
Erik Stockdale, Ecology, NWRO

<p><b>IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Skagit County Dike District No. 12</b> in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC</p>	<p>) <b>ORDER #4650</b> ) <b>Corps Reference No. 200700428</b> ) Replace an existing four-foot culvert with two ) 48-foot span bridges; grade the left bank of No ) Name Slough followed by planting a 25-foot ) wide buffer with native plants. Create a 0.5 ) acres side channel/wetland complex, Skagit ) County, Washington.</p>
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TO: Skagit County Dike District No. 12  
1317 South Anacortes Street  
Burlington, WA 98233

On April 9, 2007, Skagit County Dike District No. 12 (Dike District No. 12) submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on June 27, 2007.

The proposed project entails improving fish habitat and providing passive treatment of stormwater in No Name Slough by constructing a 0.5 acre wetland and side channel area. In addition, wetland plants and native trees and shrubs will be planted in the wetland and along 700 feet of the slough bank. The project will also replace an undersized culvert (4-feet in diameter by 30-feet long) with two lightweight 48-foot span bridges. Additionally, the spillway of a bypass ditch will be modified to regulate water levels in the wetland. The project site is located at the end of Egbers-Kalso Road in rural Skagit County, Section 5, Township 34 North, Range 3 East, WRIA #3, Lower Skagit-Samish Watershed.

The left bank of No Name Slough will be graded to form a 15-foot bench, which slopes back from the Ordinary High Water Mark (OHWM). Spoils will be graded into a 10-foot mound for planting trees. A total width of 25-feet from the left bank will be planted with native trees and shrubs. Additionally, a 21,000 square foot wetland area will be created and designed to incur seasonal inundation. This wetland will contain three different depths of elevation and will be planted with native herbaceous freshwater wetland plants that are adapted to various depths of inundation. The project also proposes to excavate approximately 220 linear feet of low flow channel through the wetland area.

Other project elements include:

- regrading of the eroded bypass ditch bank to a gradual slope followed by planting with native shrubs to stabilize soil;
- modifying the ditch inlet by backfilling with 4-inch quarry around concrete blocks to form a seal against the bankline. The quarry spalls will then be covered with a 2-inch thick layer of 1-inch drain rock to final crest elevation.
- placing of five large woody debris (LWD) units consisting of 15" diameter by 15-foot long fir or cedar tree trunks (root bolls attached) within the new wetland area.
- replacing the existing 4-foot diameter culvert with two 48-foot bridges.

#### **AUTHORITIES:**

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §1311, 1312, 1313, 1316, and 1317 (FWPCA § 301, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

#### **WATER QUALITY CERTIFICATION CONDITIONS:**

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

**A. General Conditions**

1. For purposes of this Order, the term "Applicant" shall mean Dike District No. 12 and their agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to the Washington State Department of Ecology, Northwest Regional Office, Attn: 401/CZM Federal Permit Coordinator, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order No. 4650 and Corps No. 200700428.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on April 9, 2007. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
4. Within 30 days of receipt of an updated JARPA Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
5. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
6. 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 lead workers, and state and local government inspectors.
7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that 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 water quality.
9. 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.
10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.

11. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation for each day of continuing noncompliance.

## **B. Construction Conditions**

1. All work in and near the water shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMP's) suitable to prevent exceedances of state water quality standards shall be in place before starting clearing, filling and grading work and shall be maintained throughout construction.
2. The project shall be clearly marked/staked prior to construction. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Sensitive areas and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. Equipment shall enter and operate within the marked clearing limits corridors and stockpile areas.

## **C. Wetland Mitigation**

1. Wetland creation/restoration shall be implemented as described in the Joint Aquatic Resources Permit Application Form (JARPA) dated 5 April 2007 for the No Name Slough Habitat and Drainage Project prepared by the Skagit County Conservation District.
2. Monitoring of wetland plantings will be conducted for a minimum of five years as agreed to in the e-mail dated 19 July 2007 from Tom Slocum, Skagit County Conservation District, to Cynthia Walcker, Ecology. Wetland plantings, maintenance, and performance standards shall comply with the specifications listed on Sheet 8 of 10 in the JARPA drawings, dated 23 March 2007. Monitoring reports will be prepared each monitoring year (Years 1, 2, 3, and 5 following project completion) and submitted to Ecology's Federal Permit Coordinator by the end of each monitoring year. The reports shall include the following elements:
  - Percent survival of restoration plantings.
  - Estimated percent cover of native plants.
  - Photographs from permanent points.
  - Any needed contingency measures.

## **D. Reporting Requirements**

1. A detailed "as built" report shall be prepared after mitigation construction showing any variances from the final wetland mitigation plan. The "as-built" shall be the baseline document used for all future monitoring of the mitigation project. It shall include but not be limited to:

- final site plan showing site topography (both site plan view and typical sections) and clearly indicating the mitigation site boundary;
  - photographs of the area taken from permanent photo points which will be designated on the site plan;
  - the installed planting scheme showing densities, sizes, and approximate locations of plants as well as plant sources and time of planting; and,
  - an analysis of any changes to the mitigation plan that occurred during construction.
2. Two (2) copies of the “as-built” report and drawings shall be sent to the Washington State Department of Ecology, Northwest Regional Office, Attn: 401/CZM Federal Permit Coordinator, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452, within 60 days of completing construction and planting.

#### **E. Timing Requirements**

1. This Order is valid until all compliance requirements in this document have been met.

#### **F. Notification Requirements**

1. The Applicant shall provide written notification (FAX: 425-649-7098, e-mail: [cynt461@ecy.wa.gov](mailto:cynt461@ecy.wa.gov)) or mail to Ecology’s 401/CZM Federal Permit Coordinator, Northwest Regional Office, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452, in writing at least three (3) days prior to the start of construction at the project site.
2. The Applicant shall provide written notification to Ecology’s Northwest Regional Office Federal Permit Coordinator in writing within fourteen (14) days after completion of construction.

**NOTE:** These notifications shall include the Applicant’s name, project name, project location, the number of this Order, contact and contact’s phone number.

#### **G. Emergency/Contingency Measures**

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
- a. Cease operations that are causing the compliance problem.
  - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.

- c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
  - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
  - e. Immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990 of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.
3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands.
  4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990.

## H. Appeal Process

You have a right to appeal this Order. To appeal this Order 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.
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### 1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board  
P.O. Box 40903  
Olympia, WA 98504-0903

Deliver your appeal in person to:

OR  
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

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:**

Cynthia Walcker, Federal Permit Coordinator 401/CZM  
Department of Ecology  
Northwest Regional Office  
3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008-5452

*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 July 20, 2007 at Bellevue, Washington.



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Geoff Tallent, Section Manager  
Shorelands and Environmental Assistance Program  
Department of Ecology, Northwest Regional Office  
State of Washington