



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

April 7, 2006

**REGISTERED MAIL**  
**RB 670 437 576 US**

Mr. Eric Gleason  
Skykomish Habitat, LLC  
128 Chestnut Avenue  
PO Box 1088  
Washington Grove, MD 20880-1088

**RE: Water Quality Certification Order #3228 (Corps Public Notice 200300879) for the Skykomish Habitat Mitigation Bank to create, rehabilitate, and enhance wetlands, other aquatic resources, and riparian habitat on approximately 172 acres connecting and adjacent to the Skykomish River located in Snohomish County, Washington.**

Dear Mr. Gleason:

On November 19, 2004 Skykomish Habitat, LLC submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification under the federal Clean Water Act for the Skykomish Habitat Mitigation Bank. The applicant resubmitted the JARPA to Ecology with no changes on November 4, 2005. A public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for proposed work in or near wetlands and riparian habitat connecting and adjacent to the Skykomish River in Snohomish County on May 10, 2004. Ecology has reviewed this public notice. An additional public notice regarding the request was distributed by Ecology pursuant to the provisions Chapter 173-225 WAC on August 31, 2005.

On behalf of the State of Washington, Ecology certifies that the work proposed in the resubmitted JARPA, and supplemental materials reviewed and approved by Ecology and the Mitigation Banking Review Team (MBRT), complies with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This certification is subject to the conditions contained in the enclosed Order. This letter also serves as the State response to the Corps of Engineers.

Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the applicant's determination that this work is consistent with the approved Washington State Coastal Zone Management Program. This concurrence is



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based upon the applicant's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

If you have any questions, please contact Christina Merten, the Federal Permit Manager for this project, at (425) 649-7007 or [chme461@ecy.wa.gov](mailto:chme461@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



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

Enclosure

cc: Lauren Driscoll, Ecology  
David Martin, Corps of Engineers  
Joan Cabreza, EPA Region 10  
Amy Kurtenbach, WDNR  
Bill Mavros, WDFW  
Ken S. Berg, USFW  
Eric Olson, Snohomish County

e-cc: Penny Keys, Ecology  
Loreé Randall, Ecology

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER # 3228</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. 200300879</b>
<b>CERTIFICATION TO</b>	)	Create a 172-acre wetland mitigation bank by
<b>Skykomish Habitat, LLC</b>	)	creating, rehabilitating, and enhancing wetlands
in accordance with 33 U.S.C. 1341	)	and riparian/channel complex. The project will
(FWPCA § 401), RCW 90.48.120, RCW	)	be connecting directly to the Skykomish River
90.48.260 and Chapter 173-201A WAC	)	located in Snohomish County, Washington.

TO: Skykomish Habitat, LLC  
128 Chestnut Avenue  
PO Box 1088  
Washington Grove, MD 20880-1088

On November 19, 2004 Skykomish Habitat, LLC submitted a Joint Aquatic Resource 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 the U.S. Army Corps of Engineers (Corps) for the above-referenced project on May 10, 2004. An additional public notice regarding the request was then distributed by Ecology pursuant to the provisions Chapter 173-225 WAC on August 31, 2005. The applicant withdrew and resubmitted the JARPA to Ecology with no changes on November 4, 2005.

The proposed project entails constructing and operating a 172-acre mitigation bank that would entail the ending ongoing farming activities as well as athletic fields. The project involves 20.4 acres of wetland rehabilitation, 66.1 acres of wetland creation, 39.9 acres of riparian/channel complex creation, 11.0 acres of riparian/channel complex enhancement, 30.1 acres of upland enhancement, and 4.5 acres of slope preservation. Within these areas the project proposes to create stream channel which will connect the site directly with the Skykomish River. The wetland creation and rehabilitation activities involve grading of existing upland agricultural and pasture areas and contouring of edges of existing wetland areas to create hydrological connection between existing and created wetlands. The site is currently bordered on the south and east by the Skykomish River, on the west by a 100- to 300-foot-tall escarpment, and to the north by agricultural and athletic fields. The site is partially protected from over bank flooding by a county-owned levee located along the east edge of the site. The riparian/channel complex creation and enhancement involves breaching the southern end of this levee, lowering the invert elevation of created channels to allow greater access of flows to the site, excavating additional channels, and providing improved riparian vegetation. The bank construction will occur in two separate phases (Phase 1A and 1B). The entire northern project boundary is protected from current land use by buffers and the entire project is protected in perpetuity by a conservation easement. The *Skykomish Habitat Mitigation Bank Instrument* (MBI) serves to outline and describe the legal agreements made by the permittee and signatories of this bank as well as the detailed implementation plan for the establishment and operation of the Skykomish Habitat Mitigation Bank.

The proposed work will take place at 18016 177<sup>th</sup> Avenue SE, Monroe, Washington; adjacent to the Skykomish River, approximately 2.5 miles upstream of its confluence with the Snohomish and Snoqualmie Rivers between River Miles 1.8 and 3.0, near the City of Monroe, in Snohomish County, Washington. The bank site is located in Sections 11 and 14, Township 27 North, Range 6 East on the Monroe, Washington USGS quadrangle map; in Water Resource Inventory Area 7 (Snohomish River Watershed).

#### **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 Skykomish Habitat, LLC, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: Wetland Banking Specialist/Federal Permit Coordinator, Shorelands and Environmental Assistance Program, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008. Any submittals shall reference Order No. 3228 and Corps No. 200300879.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on November 4, 2005, and supplemental materials reviewed and approved by Ecology and the Mitigation Banking Review Team (MBRT). 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 shall be withdrawn if the Corps does not issue a Section 404 permit.
6. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
7. 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.
8. Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
9. 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.

10. 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.
11. 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.
12. 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. Water Quality**

1. Skykomish River is classified as Class A waters of the state. This project will be connecting created channels directly to the Skykomish River. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

The Skykomish River has been identified on the current 303(d) list as exceeding state water quality standards for temperature upstream of the project site. This proposed project shall not result in further exceedances of water quality standards.

## **C. Stormwater**

1. During construction of all phases the Applicant shall comply with the current Construction Stormwater General NPDES Permit issued for this project (Permit #WAR-007140).
2. Prior to construction of each phase, a finalized Stormwater Pollution Prevention Plan, which is required as part of Permit #WAR-007140, must be submitted to Ecology.

3. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
4. Periodic inspection and maintenance of all erosion control structures shall be conducted no less than every 7 days from the start of the project to site stabilization. Additional inspections shall be conducted prior to and after expected rainfall events to ensure erosion control measures are in working conditions. Any damaged structures shall be immediately repaired. If it is determined at the inspection that additional measures are needed to control stormwater and erosion, they shall be implemented immediately.
5. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters. All fueling areas will be provided with adequate spill containment. During fueling and servicing of cranes, BMPs shall be in place to contain any spill of petroleum products.

#### **D. Aquatic Resources**

1. Project activities shall be achieved through measures described in the following documents, except as modified by this Order:
  - MBI Figure Package submitted to Ecology on March 22, 2006 and dated March 21, 2006.
2. Applicant shall provide written notice to Ecology at least 14 days prior to the start of placing fill in wetlands or other waters of the state, and within 14 days after completion of construction for each phase of the project.
3. During clearing and grading at the project site, Applicant shall take all necessary measures to minimize the alteration or disturbance of existing wetland and upland vegetation.
4. No mitigation credits associated with the work on this project will be released for sale or transfer until the MBI is approved by Ecology and the Corps of Engineers and all performance standards associated with Objective 1 in the MBI are met.

#### **E. Construction Conditions**

1. All excess excavated material shall be stored in only those locations designated in the MBI Figure Package dated March 21, 2006 and submitted to Ecology on March 22, 2006. Material storage shall be in accordance with Permit Number WAR-007140.

2. All construction debris and overburden material shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.

#### **F. Timing Requirements**

1. This Order is valid until all compliance requirements as outlined in the MBI and in this document have been met.
2. In-water work shall be subject to timing limitations imposed by Washington Department of Fish and Wildlife (WDFW). Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

#### **G. Notification Requirements**

1. Applicant shall provide notice to Ecology at least 3 days prior to the start of construction, and within 14 days after completion of construction for each phase (Phase 1A and Phase 1B) at the project site. Notification can take place by telephone to (425) 649-7007 or (425) 649-7000, fax to (425) 649-7098, or in writing to Ecology Northwest Regional Office, 3190 – 160<sup>th</sup> Avenue SE, Bellevue, WA 98008.

#### **H. Emergency/Contingency Measures:**

1. The Applicant shall develop a spill prevention and containment plan for all aspects of this project.
2. The facility shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
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.
4. 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, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:

- a) Cease operations at the location of the violation.
  - b) Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
  - c) Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's Wetland Mitigation Banking Specialist at (425) 649-7007 or (425) 649-7000.
  - d) Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
5. Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.
  6. 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 or WDFW on what to do with them. Ecology or WDFW may require analyses of these samples before allowing the work to resume.
  7. 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.

#### **I. Appeal Process:**

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board  
4224 - 6th Avenue SE, Rowe Six, Bldg. 2  
P.O. Box 40903  
Lacey, Washington 98504-0903

Your appeal must also be served on:

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

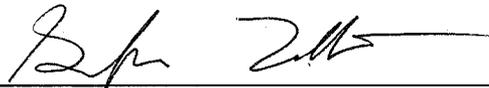
In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator  
Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

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

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 April 7, 2006 at Bellevue, Washington.



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

**ATTACHMENT A**

**SKYKOMISH HABITAT MITIGATION BANK PROJECT  
Water Quality Certification Order #3228**

**Statement of Understanding of  
Water Quality Certification Conditions**

I have read and understand the conditions of Order #3228 Section 401 Water Quality Certification for the Skykomish Habitat Mitigation Bank Project. I have also read and understand all permits, plans, documents, and approvals associated with the Skykomish Habitat Mitigation Bank Project referenced in this order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company