



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
TTY 711 or 800-833-6388 (for the speech or hearing impaired)

March 30, 2006

REGISTERED MAIL

Tom Whitney, Environmental & Hydraulic Manager
Department of Transportation
Olympic Region
P.O. Box 47417
Olympia, WA 98504-7417

RE: Water Quality Certification Order #3186 for Corps Public Notice No. 200500967
to widen SR 305 from MP 11.67 to MP 12.82 by adding two peak-hour HOV
lanes, one in each direction in the City of Poulsbo, Kitsap County, Washington.

Dear Mr. Whitney:

On August 18, 2005, Department of Transportation submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed SR 305 Vicinity Poulsbo South City Limits to Bond Road transportation project. The project proposes to widen SR 305 from MP 11.67 to MP 12.82 by adding two peak-hour HOV lanes, one in each direction. The U.S. Army Corps of Engineers issued a public notice on October 7, 2005 for the proposed project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice 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.

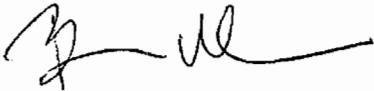
This letter also serves as the State response to the Corps of Engineers' October 7, 2005 Public Notice.



Department of Transportation
SR 305 Poulsbo-401 Certification, Order #3186
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If you have any questions, please contact Penny Kelley, Federal Project Coordinator, at 360-407-7298. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Brenden McFarland, Section Supervisor
Shorelands and Environmental Assistance Program
Department of Ecology

BM:pk
Enclosure

cc: Sandi Manning, Corps of Engineers
Jeff Davis, Department of Fish & Wildlife
Alison O'Sullivan, Suquamish Tribe
Kim Mueller, Department of Transportation

e-cc: Penny Keys, HQ
Loree' Randall, HQ
Bob Penhale, Water Quality Northwest Region

IN THE MATTER OF GRANTING)
A WATER QUALITY CERTIFICATION)
TO the Washington State Department of)
Transportation in accordance with)
33 U.S.C. 1341 (FWPCA § 401),)
RCW 90.48.120, RCW 90.48.260,)
and Chapter 173-201A WAC)

Order # 3186
(Corps Reference No 200500967)
Widen SR 305 from MP 11.67 to
MP 12.82 by adding two peak-
hour HOV lanes, one in each
direction in the City of Poulsbo,
Kitsap County, Washington.

TO: Washington State Department of Transportation
Attn: Tom Whitney
P.O. Box 47417
Olympia, WA 98504-7417

On August 18, 2005, the Department of Transportation submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. The request for certification was made available for public review and comment through the U.S. Army Corps of Engineers' Public Notice No. 200500967 on October 7, 2005.

The proposed project is located in the City of Poulsbo in Kitsap County, Washington Section 11, 14, & 23, Township 26N and Range R1E. The project entails adding two peak-hour HOV lanes, one in each direction, on SR 305 from MP 11.67 to MP 12.82. Intersections within the project limits will be upgraded to current road design standards and to accommodate the added lanes.

South Fork Dog Fish creek runs adjacent to SR 305 and crosses under the road in three locations within the project limits. In addition to the creek, there are multiple wetlands adjacent to the roadway. To minimize impacts to the creek and the wetlands, retaining walls will be constructed along SR 305. Approximately 1200 linear feet of South Fork Dogfish Creek will be relocated to a new channel and planted with riparian vegetation. In addition to relocating a portion of the stream, eight culverts will be replaced with larger, fish passable culverts. Wetland impacts total 2.00 acres. These impacts will be mitigated through wetland creation (2.62 acres) and enhancement (3.63 acres) at a 13.6 acre site located along the south side of SR 305 within the project limits.

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 reviewed 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. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306, and 307);
- 2) Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and other requirements of state law; 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 project as proposed and conditioned will not violate applicable water quality standards and other applicable requirements of state law. Therefore, in view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC, water quality certification is granted to the Washington State Department of Transportation (WSDOT) Northwest Region subject to the conditions within this Order.

Certification of this proposal does not authorize the WSDOT Olympic Region 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), unless specifically authorized within this Order. 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 the Washington State Department of Transportation (WSDOT) Olympic Region, its agents, assignees, and contractors.
2. All submittals required by conditions of this Order shall be sent to Ecology, Attn: Federal Project Coordinator, P.O. Box 47600, Olympia, WA 98504-7600, or by e-mail at pkel461@ecy.wa.gov. All submittals shall reference Order No. 3186 and Corps No. 200500967.

3. Work authorized by this Order is limited to the work described in this JARPA received by Ecology on August 18, 2005 and supplemental materials reviewed and approved by Ecology. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the August 18, 2005 JARPA is voided by subsequent changes to the project not authorized by this Order.
4. Ecology will determine within thirty (30) days of receipt of an updated JARPA if the revised project requires a new certification and public notice or if a modification of this Order is required.
5. This Order shall be withdrawn if the U.S. Army Corps of Engineers (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 workers, and state and local government inspectors.
8. The Applicant shall provide access to the project and 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.
9. The Applicant's representative shall have adequate authority to ensure proper implementation of the Erosion and Sediment Control Plan (TESC Plan), as well as immediate corrective actions necessary because of changing field conditions. If the Applicant's representative issues a directive necessary to implement a portion of the TESC or to prevent pollution to waters of the state, all personnel on site, including the construction contractor and the contractor's employees, shall immediately comply with this directive.
10. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to comply with the state's water quality laws. Furthermore, 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.
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) per violation for each day of continuing noncompliance.

B. Water Quality Conditions:

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (173-201A WAC) ground water standards (173-200 WAC) or sediment quality standards (Chapter 173-204 WAC), except as modified by this Order.

1. South Fork Dogfish Creek and Dog Fish Creek are tributaries to Liberty Bay in Puget Sound which is classified as a Class A waterbody in this location. The class A water quality standards of 173-201A-030(2) apply, except as specifically modified by this order.
2. Consistent with WAC 173-201A-110, this Order authorizes a short term modification to the turbidity standards for Class A waters by granting a temporary mixing zone where turbidity criteria may be exceeded. The short term modification only applies to the introduction of South Fork Dogfish Creek into the newly constructed channel and for stream diversion and stream re-introduction during replacement of eight culverts.
 - a. A short term modification is granted for a total of one day for the introduction of South Fork Dogfish Creek into the new channel (during the work window specified in the HPA). For this one day, a mixing zone of 800 feet from the end of the new channel is granted.
 - b. A short term modification is also granted for a total of 18 days for stream diversion and re-introduction during culvert replacement work during the work window specified in the HPA. During these 18 days a mixing zone of 500 feet downstream of the work area is granted.
3. Nothing in this Order 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.

Monitoring

4. A water quality monitoring plan for in-water activities shall be developed and submitted to Ecology for review and approval 10 days prior to the start of either stream relocation work or culvert replacement, whichever comes first.
5. Water quality monitoring shall be conducted during the introduction of South Fork Dogfish Creek into the new channel and twice daily during removal of the downstream barrier re-introducing the creek into the main channel. Water Quality monitoring shall be conducted once at the beginning of the next day after stream re-introduction if monitoring results show that turbidity levels were elevated at the end of the previous workday.
6. Water quality monitoring shall be conducted twice daily during stream diversion and stream re-introduction during culvert replacement work for all eight culverts.

7. Samples shall be collected twice daily, for culvert replacement and stream re-introduction to the main channel, and be spaced at a minimum of four hours apart.
8. A background sample shall be collected prior to taking a compliance sample each day water quality samples are collected for the purpose of measuring turbidity.
9. Monitoring results shall be submitted monthly to Ecology's Federal Project Coordinator in accordance with condition A2 above.

C. Timing:

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

D. Notification Requirements:

1. Notification shall be made to Ecology's Federal Project Coordinator in accordance with condition A2 above for the following activities:
 - a. At least 10 days prior to the pre-construction meeting;
 - b. At least 10 days prior to the onset of any work on site;
 - c. At least 10 days prior to construction of the mitigation site;
 - d. At least 10 days prior to stream re-channeling work;
 - e. At least 10 days prior to initial culvert replacement work; and
 - f. Immediately following a violation of the state water quality standards or conditions of this Order.

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

2. The Applicant shall ensure that all appropriate Project Engineers and Contractors at this project site and/or mitigation site have read and understand all relevant conditions of this Order and all permits, approvals, and documents referenced in the Order. The Applicant shall provide Ecology with a signed statement (see Attachment A for an example) from each Project Engineer and Contractor that shows 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 no less than 10 days before construction begins at the project and/or mitigation sites.

E. Construction, Equipment Staging and Maintenance:

Construction Conditions:

1. The Applicant shall comply with the conditions of the current Construction Stormwater Permit (National Pollutant Discharge Elimination System (NPDES)) issued by Ecology for this project.
2. The Applicant shall submit a copy of the Stormwater Pollution Prevention Plan to the Federal Project Coordinator, in accordance with condition A2 above, at least thirty (30) days prior to beginning construction for review. The SWPPP shall be prepared in accordance with the requirements of the Construction Stormwater Permit issued for this project.
3. All access roads for culvert replacement work and stream relocation work that temporarily impacts wetlands shall be clearly marked/staked prior to construction with orange construction fencing in order to be clearly visible to equipment operators. Equipment shall enter and operate only within the delineated work area.
4. All sensitive aquatic areas that are to be temporarily disturbed including wetlands, wetland buffers, and stream buffers, shall be protected from erosion using mulch or its equivalent for the duration of the project and within seven days of the project completion. If erosion control seed mixes are used in these areas, they shall consist of native species unless otherwise approved by modification to this Order. All disturbed areas shall be replanted with native vegetation within the first appropriate planting season after construction is completed.
5. Work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.
6. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
7. All construction debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
8. Turbid de-watering water associated with in-water work shall not be discharged directly to waters of the state. Turbid de-watering water shall be routed to an upland area for on-site settling per the Construction Stormwater Permit for this project or off-site disposal. The discharge from the upland areas shall meet the water quality criteria at the point of discharge.

9. Clean de-watering water associated with in-water work that has been tested and confirmed to meet water quality standards may be discharged directly to waters of the state. The discharge outfall method shall be designed and operated so as not to cause erosion or scour in the stream channel, banks, or vegetation.
10. Concrete process water shall not enter surface waters of the state. All concrete shall be completely cured prior to coming into contact with state surface waters. Any contact water discharged from a confined area with curing concrete shall be routed to upland areas to be treated and infiltrated, or disposed of appropriately with no possible entry to state waters.

Equipment Staging & Maintenance

11. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state, including wetlands. If a staging area must be located within 50 feet of a water of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Permit Manager before placement of the staging area in the set back area.
12. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its use around waters of the state, including wetlands.
13. 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.
14. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters. The applicant shall set up a designated area for washing down equipment.
15. No cleaning solvents or chemicals used for tool or equipment cleaning may be discharged to the ground or to waters of the state.
16. A separate area shall be set aside, which does not have any possibility of draining to surface waters, for the wash-out of concrete delivery trucks, pumping equipment, and tools.

Culvert Replacement:

17. All culvert work shall be conducted in the dry or in isolation from stream flow by installing a bypass flume or culvert, or by pumping the stream flow around the work area. The stream diversion system shall be designed and operated so as to not cause erosion or scour in the stream channel or on the banks of the waterbody in which work is being conducted.
18. Prior to returning stream flow to the de-watered work area, all bank protection shall be completed.
19. Temporary sediment traps shall be cleaned out and the settled sediments removed from the stream channel before removing any stream diversion system and returning the flow of the stream to its natural channel. Settled sediments shall not be allowed to enter waters of the state, including wetlands, due to water or runoff flows that may occur during or after construction is completed.
20. Reintroduction of water to the channel shall be done gradually and at a rate not higher than the normal stream flow in order to minimize the mobilization of sediments and fines into downstream waters.
21. Upon completion of the project, all materials used in the temporary bypass, or other method of work area isolation, shall be removed from the site and placed in an area approved by the appropriate regulatory authority.
22. Culverts shall be installed and maintained to avoid inlet scouring and to prevent erosion of stream banks downstream of the project.
23. Fill associated with culvert installation shall be protected from erosion to the 100-year peak flow.
24. Disturbance of the streambed and banks shall be limited to that necessary to replace the culvert and to construct any required channel modification associated with it. Affected streambed and bank areas outside the culvert shall be restored to pre-project or improved conditions following installation of the culvert. All disturbed streambank areas shall be protected from temporary erosion using BMPs until stabilized by vegetation. At the end of each in-water work window for the construction season, all disturbed areas from culvert replacement work shall be planted with native species within the next appropriate planting season.
25. Culvert extension, removal, and/or replacement work shall comply with Condition E.10 above.

Channel Relocation:

26. New channel construction shall occur in isolation from stream flow and shall be done in a manner that minimizes temporary impacts to wetlands.
27. Before water is diverted into the permanent new channel, all channel stabilization work and materials shall be in place.
28. Spoils from the new channel shall be placed in an approved upland site. This material, if appropriate, may be used to fill the old channel once the diversion has been completed.
29. Within seven (7) calendar days of completing the channel work, all disturbed areas shall be protected from erosion using vegetation or other means.

F. Wetland & Stream Mitigation Conditions:

1. The Applicant shall implement the mitigation measures described in the *Final SR 305 Vicinity Poulsbo South City Limits to Bond Road, Final Wetland Mitigation Plan* (hereafter referred to as "mitigation plan"), prepared by Washington State Department of Transportation, dated March 2006 and approved by Ecology on March 27, 2006.
2. Any changes to the mitigation plan, beyond minor modifications shall be submitted in writing to Ecology's Federal Permit Manager in accordance with condition A2 above, for approval.

Mitigation Construction

3. Compensatory mitigation construction and installation shall occur prior to, or concurrently with, project impacts to wetlands.
4. Ten days prior to starting construction on the mitigation site, WSDOT shall submit to Ecology for review, a copy of the groundwater monitoring results from the mitigation site. If WSDOT alters the final grading plan based on those monitoring results, a copy of the plan shall be submitted to Ecology's Federal Project Coordinator for review and approval.
5. All excess excavated material from the mitigation site shall be disposed of off-site in an appropriate location outside of sensitive areas and their buffers and shall be stabilized or contained to prevent its entry into waters of the state.
6. Within seven (7) days' completion of grading, all earth areas that have been exposed or disturbed on the mitigation sites shall be stabilized using mulch or its equivalent such as seeding with a suitable erosion control seed mix consisting of native grasses and forbs.

7. Upon completion of grading on the mitigation sites and prior to planting, the applicant shall provide written confirmation to Ecology that finished grades are consistent with the mitigation plan or other subsequent Ecology-approved modifications to grading plans (e.g. signed letter or memo from the surveyor, wetland biologist, or project engineer indicating how final elevations were confirmed and whether they are consistent with the plan)
8. An as-built report documenting the final design of the mitigation site shall be prepared when the mitigation site is completed. The report shall include the following:
 - a. final site topography with site boundaries clearly marked;
 - b. dates of implementation, including dates of grading, planting, and final completion;
 - c. plan sheets showing what plants were installed including species, densities, sizes, approximate locations of plants, and plant sources;
 - d. habitat features (snags, large woody debris, etc) and their locations;
 - e. other plan features;
 - f. planned locations of sampling and monitoring sites, if known;
 - g. photos documenting baseline conditions (mark photo points on as-built plan);
 - h. any changes to the plan that occurred during construction – include the problems that were encountered, what was done to correct them, and reasons for the changes;
 - i. any necessary follow-up actions and a schedule for those actions.
9. The as-built report shall be sent to Ecology's Federal Project Coordinator within 180 days of construction and planting completion. If plants are installed more than 180 days after construction of the mitigation site, or planting is to be sequenced over time, two reports shall be submitted: 1) a brief note on the construction phase summarizing any changes from the mitigation plan and submitted within 180 days of completion of grading, and 2) a final as-built report to be prepared after the planting is completed.

Mitigation/Stream Realignment Monitoring & Maintenance

10. All plantings at the mitigation site and stream realignment site shall be watered and otherwise maintained as necessary to meet performance standards as stated in the mitigation plan.
11. The Applicant shall comply with the most current NPDES permits that apply to WSDOT for Aquatic Noxious Weed Control if herbicides are selected to control invasive species at the mitigation and stream realignment sites. Methods used in areas within 20 feet of streams shall be limited to localized application such as backpack sprayer or hand wicking. Application of herbicides shall occur only in dry weather.

12. Wetland mitigation and stream realignment site monitoring will occur for a minimum of 10 years, with monitoring performed in years 1, 2, 3, 5, 7 and 10. If a performance standard for monitoring years 1 through 7 is not met, the Applicant shall present to Ecology the probable reasons for non-attainment and shall submit for approval a proposed plan of action to resolve the problem. Ecology will determine whether remedial actions should be taken, additional wetland mitigation is needed, or the performance standard should be adjusted.
13. If, at monitoring year 10, all required performance standards have not been met, then Ecology may require additional monitoring and/or additional wetland mitigation area. Monitoring reports shall be sent to Ecology's Federal Project Coordinator in accordance with condition A2 above.
14. Any changes to the wetland monitoring plan must be approved in writing by Ecology.

G. Emergency/Contingency Measures Conditions:

1. The Applicant shall develop and implement a spill prevention and containment plan for this project and shall have spill cleanup material available on site at all times during construction.
2. Any work that is out of compliance with the provisions of this Order, or producing conditions that are causing distressed or dying fish, or causing any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters is prohibited. If such work occurs, the Applicant shall comply with WSDOT's Instructional Letter 4055.00 Environmental Compliance Assurance Procedure for Construction projects and Activities (March 10, 2003) and 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. In the event of finding distressed or dying fish, 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 receives further instructions from Ecology. 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. This work shall take precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials;
 - e. Immediately notify Ecology's Southwest Regional Spill Response Office at 360-407-6300 and Department of Fish and Wildlife of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.

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3. If at any time, the Applicant finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the Applicant shall immediately notify Ecology's Southwest Region Regional Spill Response Office at 360-407-6300.

Appeal Process:

Any person aggrieved by Order # 3186 may obtain review by appeal. Pursuant to Chapter 43 21B RCW, a person can appeal this Order to the Pollution Control Hearings Board within thirty (30) days of the date of receipt of this Order.

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

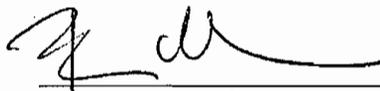
Your appeal must also be served on:
The Department of Ecology
Appeals Coordinator
P.O. Box 47608, Olympia, WA 98504-7608

In addition, please send a copy of your appeal to:
Federal Permit Appeal Coordinator
Department of Ecology
P.O. Box 47600, Olympia, WA 98504-7600

*For additional information see 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 March 30, 2006 at Olympia, Washington



Brenden McFarland, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington