



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

June 23, 2006

REGISTERED MAIL
RB 670 437 718 US

Skagit County
Attn: Janice Marlega
1800 Continental Place
Mount Vernon, WA 98273

RE: Water Quality Certification Order #3297 for U.S. Army Corps of Engineers (Corps) Reference #200600154 to fill wetlands to widen and realign Helmick Road, and to restore and realign Red and Dairy creeks, and enhance wetlands, Skagit County, Washington

Dear Ms. Marlega:

On February 6, 2006, Skagit County submitted a Joint Aquatic Resources 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 widening and reconstruction of Helmick Road. The Corps issued a Nationwide Permit (NWP) #23, Categorical Exclusions, for the project on March 24, 2006. During review of the project and the NWP, Ecology determined that an individual Section 401 water quality certification would be required. Ecology issued a public notice pursuant to Chapter 173-225 WAC on May 12, 2006. The project proposes to place 5.45 acres of fill in reed-canary grass dominated palustrine emergent wetlands for reconstruction and widening of Helmick Road. A trailhead and parking area will be reconfigured south of SR 20. Fill and culverts at Red Creek will be removed and replaced with a 150-foot bridge, and Dairy tributary will be rerouted to a more natural channel through wetlands. Twenty (20) acres of palustrine emergent wetlands will be enhanced and 0.3 acre of wetlands will be created as compensatory mitigation for wetland impacts.

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.

On April 7, 2006, Skagit County submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the applicant's determination



that the proposed work is consistent with Washington's CZMP. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the Federal Water Pollution Control Act.

If you have any questions, please contact Rebekah Padgett, Federal Permit Coordinator, at 425-649-7129 or by email at rp461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Geoff Tallent
Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:rrp:cja

Enclosure

cc: Jack Kennedy, U.S. Army Corps of Engineers
Randel Perry, U.S. Army Corps of Engineers
Ross Widener, Widener & Associates
Jeffrey Kamps, Washington Department of Wildlife
Lauren Rich, Upper Skagit Tribe

e-cc: Penny Keys – HQ
Loree' Randall – HQ

IN THE MATTER OF GRANTING A) ORDER #3297
WATER QUALITY) Corps Reference #200600154
CERTIFICATION TO) Wetland fill to widen and realign Helmick Road,
Skagit County) restore and realign Red and Dairy creeks, and
in accordance with 33 U.S.C. 1341) enhance wetlands, located in Red Creek
(FWPCA § 401), RCW 90.48.120, RCW) watershed, tributary to Skagit River, Skagit
90.48.260 and Chapter 173-201A WAC) County, Washington.

TO: Skagit County
Attn: Janice Marlega
1800 Continental Place
Mount Vernon, WA 98273

On February 6, 2006, Skagit County submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. The Corps issued a Nationwide Permit (NWP) #23, Categorical Exclusions, for the project on March 24, 2006. During review of the project and the NWP, Ecology determined that an individual Section 401 water quality certification would be required. A public notice regarding the request was distributed by the Ecology for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on May 12, 2006.

The proposed project entails placement of 5.45 acres of fill in reed-canary grass dominated palustrine emergent wetlands, for reconstruction and widening of Helmick Road. The road improvements will include better sight distance, turn pockets and tapers at SR 20, and shoulders. A trailhead and parking area will be reconfigured south of SR 20. Fill and culverts at Red Creek will be removed and replaced with a 150-foot bridge, and Dairy tributary will be rerouted to a more natural channel through wetlands. 20 acres of palustrine emergent wetlands will be enhanced and 0.3 acre of wetlands will be created as compensatory mitigation for wetland impacts. Helmick Road is located north of SR 20 to Nuwha-Ah Lane, approximately 2 miles east of SR 9, in unincorporated Skagit County, crossing Sections 8 and 17, Township 35 North, Range 5 East, WRIA #3, in the Red Creek watershed tributary to the Skagit River.

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:

- A1. For purposes of this Order, the term "Applicant" shall mean Skagit County, and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #3297 and Corps Reference #200600154.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on February 6, 2006. 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.

- A4. 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.
- A5. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
- A6. 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.
- A7. 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.
- A8. 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.
- A9. 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 or mitigation sites.
- A10. 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.
- A11. 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:

- B1. 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).

C. Project Mitigation for Wetlands:

- C1. Impacts to 5.45 acres of wetlands shall be mitigated through enhancement of 20 acres and creation of 0.3 acres of wetlands, restoration of Red Creek, and relocation and restoration of Dairy tributary to Red Creek. These measures are described in the following documents, except as modified by this Certification and Order, and including any approved revisions:
- a. *Wetland Mitigation and Monitoring Plan, Helmick Road Improvements Project, Skagit County, Washington, Widener & Associates, April 26, 2006.*
- C2. In addition to mitigation measures described in the above-referenced documents, the following requirements shall be conditions for the mitigation site:
- a. Pre-construction Meeting: The Applicant's wetland ecologist assigned to oversee wetland mitigation implementation shall be present at the pre-construction meeting for the project.
 - b. Timing: The wetland mitigation plan shall be implemented concurrently with or within one growing season following the site construction for the development. Mitigation site planting will be phased over several years.
 - c. As-Built Report and Drawings: A report documenting the final design of the mitigation project areas shall be prepared when site construction and planting is completed. The report shall include the following:
 - Vicinity map showing site access;
 - Drawings that clearly identify the boundaries of the mitigation areas;
 - The installed initial planting scheme showing densities, sizes, and locations of plants, as well as plant sources and the time of planting;
 - Photographs of the area taken from permanent reference points;
 - Locations of photopoints, sampling and monitoring sites; and
 - An analysis of any changes to the mitigation plan that occurred during construction.

A copy of the As-Built Report shall be sent to Ecology's 401/CZM Federal Project Manager within 60 days of completing construction, and in no case later than December 31, 2007. The project monitoring period shall commence with Ecology's acceptance of the As-Built Report.

- d. Field Supervision: The wetland mitigation implementation shall be field-supervised by a qualified wetland ecologist to ensure plants are appropriately placed.
- e. Permanent Protection: The Applicant shall provide documentation showing the means of permanent protection for the mitigation sites (such as property deed showing County ownership, conservation easement or similar) to Ecology's 401/CZM Federal Project Manager within 60 days of completing construction, and in no case later than December 31, 2007.
- f. Performance Standards: The performance standards for the wetland mitigation shall be as listed in the *Wetland Mitigation and Monitoring Plan, Helmick Road Improvements Project, Skagit County, Washington*, Widener & Associates, April 26, 2006.
- g. Monitoring: Monitoring to ensure that the project performance standards are met shall be performed as described in the *Wetland Mitigation and Monitoring Plan, Helmick Road Improvements Project, Skagit County, Washington*, Widener & Associates, April 26, 2006, pages 13 and 14. In addition, all mitigation monitoring shall take place over a period of ten (10) years, with monitoring performed in years 1, 2, 3, 5, 7 and 10. **Copies of all monitoring reports shall be submitted to Ecology's 401/CZM Federal Project Manager at 3190 – 160th Avenue SE, Bellevue, WA, 98008-5452**, as well as to the U.S. Army Corps of Engineers.
- h. Maintenance: Maintenance of the wetland mitigation sites is necessary to ensure that the required performance standards are met.
- i. Contingency Measures: The Applicant is responsible for the success of the mitigation measures. A Contingency Plan may be required as described in the *Wetland Mitigation and Monitoring Plan, Helmick Road Improvements Project, Skagit County, Washington*, Widener & Associates, April 26, 2006, pages 14 and 15. Extended monitoring may also be required depending on implemented contingency measures.
- j. Year 10 Rating: The 2004 Washington State Wetlands Rating System (or as revised) shall be applied to the mitigation area at the end of the 10-year monitoring period to determine the mitigated wetland category.

- k. Year 10 Delineation: At the end of the 10-year monitoring period, the wetlands within the mitigation area shall be delineated using the 1997 Washington State Wetland Identification and Delineation Manual (or as revised) to determine exact acreage of wetland compensation.

D. Construction:

- D1. Prior to clearing and grading in or near wetlands, the wetlands to remain undisturbed shall be protected from construction impacts. Bright orange construction fencing shall be installed prior to site clearing to mark the edge of the existing wetlands and stream channels to be protected. All project staff shall be trained to recognize the construction fencing that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be altered.
- D2. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- D3. 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.

E. Stormwater Management:

- E1. Construction Stormwater and Erosion Control: Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (e.g., a perimeter erosion control silt fence, etc.), shall be in place before starting clearing, filling, and grading work at the site, and shall also comply with all requirements of Construction Stormwater General Permit #WAR-007344.
- E2. The Applicant shall comply with the *Stormwater Report, Helmick Road Improvement & Environmental Enhancement Project*, dated February 2006, prepared by Reichhardt & Ebe Engineering, Inc.

F. Emergency/Contingency Measures:

- F1. The Applicant shall develop a spill prevention and containment plan for all aspects of this project.
- F2. 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.
- F3. 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.
- F4. 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 401/CZM Federal Project Manager at (425) 649-7129 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.
- F5. 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.
- F6. 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.

G. Timing Requirements:

G1. This Order is valid until all compliance requirements in this document have been met.

H. Notification Requirements:

H1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction, and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #200600154, Order #3297, can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

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.

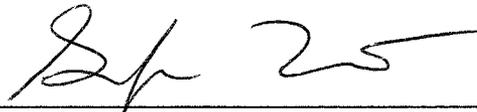
In addition, please send a copy of your appeal to:

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 June 23, 2006 at Bellevue, Washington.



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

ATTACHMENT A

**SKAGIT COUNTY
HELMICK ROAD PROJECT
Water Quality Certification Order #3297**

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

I have read and understand the conditions of Order #3297 Section 401 Water Quality Certification for the Helmick Road Project. I have also read and understand all permits, plans, documents, and approvals associated with the Helmick Road Project referenced in this order.

Signature

Date

Title

Company