



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

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July 24, 2008

REGISTERED MAIL  
RB 252 946 761 US

Sky Miller  
Wildlands of Washington, Inc  
1800 4<sup>th</sup> Street, Suite A  
Marysville, WA 98270

**RE: Water Quality Certification Order #5749 and Corps NWP 27 and NWP 33,  
Permit # NWS-2008-623-SOD for the Blackjack Creek Mitigation Site in  
Kitsap County, Washington.**

Dear Mr. Miller:

On April 28, 2008, the Department of Ecology (Ecology) received the Department of Transportation's (WSDOT) Joint Aquatic Resource Permit Application (JARPA) for a 401 Water Quality Certification (401 Certification) for the proposed Blackjack Creek Mitigation Site. The project proposes to rehabilitate 8 acres of wetland habitat as offsite mitigation for 1.83 acres of wetland impacts on the SR 16 Burley-Olalla Interchange in Kitsap County, Washington. The U.S. Army Corps of Engineers issued NWP 27 and NWP 33 for the project on July 8, 2008.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and applicable state laws. Ecology's certification is contingent upon the Applicant's compliance with the enclosed Order's conditions.



Wildlands of Washington, Inc.  
Blackjack Creek Mitigation Site  
Corps No. 200800623, Order No. 5749  
July 24, 2008  
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If you have any questions, please contact Penny Kelley, Federal Project Coordinator, at 360-407-7298 or at [pkel461@ecy.wa.gov](mailto:pkel461@ecy.wa.gov). The Order may be appealed as described in its appeal section.

Sincerely,

A handwritten signature in cursive script that reads "Brenden McFarland" with a small "for" written below the name.

Brenden McFarland, Section Manager  
Environmental Review and Transportation Section  
Shorelands and Environmental Assistance Program

BM:pk  
Enclosure

cc: Rebecca McAndrews, Corps of Engineers  
Caroline Corcoran, Ecology  
Jeff Sawyer, Department of Transportation  
Carl Ward, Department of Transportation

**IN THE MATTER OF GRANTING A ) ORDER # 5749**  
**WATER QUALITY ) Corps Reference No. # NWS-2008-623-SOD**  
**CERTIFICATION TO ) Rehabilitate 8 acres of wetland habitat as offsite**  
**Wildlands of Washington, Inc. ) mitigation for 1.83 acres of wetland impacts on**  
in accordance with 33 U.S.C. 1341 ) the SR 16 Burley-Olalla Interchange project.  
(FWPCA § 401), RCW 90.48.120, RCW )  
90.48.260 and Chapter 173-201A WAC )

TO: Sky Miller  
Wildlands of Washington, Inc  
1800 4<sup>th</sup> Street, Suite A  
Marysville, WA 98270

On April 28, 2008, Wildlands of Washington, Inc. (Wildlands) submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification). Ecology issued a public notice for the project on June 17, 2008 pursuant to the provisions of Chapter 173-225 WAC.

Wildlands proposes to rehabilitate 8 acres of wetland habitat as offsite mitigation for 1.83 acres of wetland impacts on the Department of Transportation project, SR 16 Burley-Olalla Interchange. The 8-acre mitigation site is part of a larger 54-acre site known as the Blackjack Creek Mitigation Site. Wildlands will rehabilitate the wetland habitat by doing the following:

- Construct a new, meandering stream channel for Blackjack Creek that will connect the stream to the surrounding wetlands and creek floodplain.
- Remove sections of the creek berm on the east side of the existing creek channel.
- Install large woody debris in the new and existing creek channels.
- Install snags, logs, and debris piles for wildlife.
- Plug drainage ditch segments within the project boundary.
- Remove drain tiles during grading activities.
- Remove existing culvert and concrete slab low-flow crossing.
- Remove livestock and barb wire fencing.
- Plant native wetland species to create a mix of palustrine emergent, scrub shrub, and forested wetland habitat.
- Construct low hummocks to create microtopography on site and increase native plant diversity.
- Monitor the site for 10 years and conduct ongoing management of invasive plant species.

The project is located at 400 SE Lider Road in Port Orchard, Kitsap County WA – Section 14 (SW ¼ section), Township 23 North and Range 1 East, WRIA 15 East-Kitsap.

**AUTHORITIES**

In exercising authority under 33 U.S.C. § 1341, 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 Wildlands of Washington, Inc., and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's HQ, Attn: Penny Kelley, 401 Federal Project Coordinator/Transportation Liaison, PO Box 47600, Olympia WA 98504-7600. All submittals shall reference Order # 5749 and Corps Reference # NWS-2006-623-SOD.
3. Work authorized by this Order is limited to the work described in the April 28, 2008 JARPA. 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 rescinded if the U.S. Army Corps of Engineers does not issue an individual 404 permit for the project.
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. The Applicant shall provide access to the project site and all mitigation sites upon Ecology's request 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 project engineers, contractors, and other personnel with authority to direct work 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 individual mentioned above indicating that she or he has read and understands this Order's conditions 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.
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) per violation for each day of continuing noncompliance.

#### **B. Notification Requirements**

1. All submittals required by this Order shall be sent to Ecology's HQ, Attn: Penny Kelley, 401 Federal Project Coordinator/Transportation Liaison, P.O. Box 47600, Olympia WA 98504-7600. All submittals shall reference Order # 5749 and Corps Reference # NWS-2008-623-SOD.
2. In accordance with condition B.1., the Applicant shall notify Ecology's Federal Project Coordinator of 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. Immediately following a violation of the state water quality standards or conditions of this Order.

#### **C. Wetland Mitigation Site; Design, Monitoring & Submittals**

1. This order approves the proposed mitigation design, as described in the *WSDOT SR 16 Burley-Olalla Interchange Project Offsite Mitigation Report* dated April 20, 2007, and the *Washington State Department of Transportation SR 16 Burley-Olalla*

*Interchange Project Offsite Mitigation Plan Amendment Report* dated June 25, 2008, developed by Wildlands of Washington, Inc.

2. In addition to mitigation measures described in the above-referenced documents, the following requirements shall be conditions for the mitigation site:
  - a. Fertilizer: Only minimal amounts of slow-release fertilizer shall be used on the mitigation site and only within planting holes, as needed.
  - b. Field Supervision: The wetland mitigation implementation shall be field-supervised by a qualified wetland ecologist to ensure that grading was completed as planned and plants are appropriately placed.
3. The following conditions apply to the mitigation site:
  - a. As-built Report: Submit a final as-built report for the wetland mitigation project, with drawings, to Ecology (per condition A2) within 60 days of completing construction, including planting.
    1. Provide 1 electronic copy on compact disc and 1 hard copy. Always prominently display the Corps Reference Number and Ecology Order Number.
    2. Include the following information in the as-built report:
      - a. Final site topography.
      - b. Photographs taken from permanent reference points.
      - c. Installed planting scheme with quantities, densities, sizes and approximate locations.
      - d. Types of habitat features (snags, rootwads, etc.) and their locations.
      - e. Important dates including:
        - i. When the development project's construction began.
        - ii. Starting and completion dates of the compensatory mitigation construction, including site grading and planting.
      - f. Name and contact information of the parties responsible for the mitigation site, including the applicant, landowner, and wetland professional on site during construction.
      - g. Description of and reasons for any changes to the plan.
      - h. Description of any problems that occurred during construction.
      - i. List of any follow-up actions needed, with a schedule.
      - j. Copy of the deed notification.
  - b. Permanent Protection: The Applicant shall provide documentation showing the means of permanent protection for the mitigation site (such as a deed restriction, conservation easement, or similar instrument) to Ecology's 401/CZM Federal Project Coordinator along with the as-built report.
  - c. Performance Standards: The performance standards for the wetland mitigation shall be as listed in the Mitigation Plan, which details standards for plant survival and plant cover.
  - d. Monitoring: Monitoring to ensure that the project performance standards are met shall be performed as described in the Mitigation Plan. In addition, all

mitigation monitoring shall take place over a period of 10 years, in years 1, 2, 3, 5, 7 and 10. **Two copies of all monitoring reports shall be submitted to Ecology per Condition A2.**

- e. Maintenance: Maintenance of the wetland mitigation sites is necessary to ensure that the required performance standards are met. Maintenance shall be performed as described in the Mitigation Plan.
- f. Year-5 Delineation: The mitigated wetlands shall be delineated using the 1997 Washington State Wetlands Identification and Delineation Manual (or as updated) during the 5<sup>th</sup> year monitoring period to determine the actual area of wetlands rehabilitated.
- g. Year 10 Rating: The 2004 Washington State Wetlands Rating System (or as updated) shall be applied to the mitigation area at the end of the 10-year monitoring period to determine the classification and rating of the rehabilitated wetlands.
- h. Contingency Measures: The Applicant is responsible for mitigation site success and maintaining the functions of remaining wetlands. Contingency measures described in the Mitigation Plan (p. 65) the Addendum (p. 6) shall be implemented as soon as monitoring reveals at least one unmet performance measure.

#### **D. Wetland Mitigation Site Construction**

- 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. Within the project limits<sup>1</sup>, all environmentally sensitive areas including, but not limited to, wetlands, wetland buffers, and mitigation areas shall be fenced with high visibility construction fence (HVF) prior to commencing construction activities. Construction activities include equipment staging, materials storage, and worker-vehicle parking.

**\*\* Note:** *This condition does not apply to activities such as pre-construction surveying and installing HVF and construction zone signage.*

- a. If the project will be constructed in stages<sup>2</sup> a detailed description and drawings of the stages shall be sent to Ecology for review at least 20 days prior to placing HVF.
- b. Condition D.2 shall apply to each stage.
- c. All field staff shall be trained to: recognize HVF; understand its purpose; and properly install it in the appropriate locations.

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<sup>1</sup> Project limits include mitigation sites, staging areas, borrow sources, and other sites developed or used to support project construction.

<sup>2</sup> A stage is part of a project that has been separated into at least two distinct areas to be built during separate timeframes.

- d. HVF shall be maintained until all work is completed for each project or each stage of a staged project.
3. All clearing limits, stockpile sites, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities.
  - a. All clearing limit, stockpile site, staging area, and tree-preservation marking shall be maintained until all work is completed for each project.
4. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
5. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
6. 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.

#### Equipment & Maintenance

7. 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 Project Coordinator before placement of the staging area in the set back area.
8. 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.
9. 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.
10. 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.
11. No cleaning solvents or chemicals used for tool or equipment cleaning may be discharged to the ground or to waters of the state.
12. Reintroduction of water to the newly constructed 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.

#### **E. Emergency/Contingency Measures**

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 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, begin containment and cleanup efforts immediately and complete them 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 Northwest Regional Spill Response Office at 425-649-7000 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.
  - f. Immediately notify the National Response Center at 1-800-424-8802 for spills to water.
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 Northwest Region Regional Spill Response Office at 425-649-7000.

**F. Timing Requirement:**

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

**G. Appeal Process:**

You have the right to appeal this decision to the Pollution Control Hearings Board. 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:**

Penny Kelley  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504

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 24<sup>th</sup> day of July at Olympia, Washington.

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Brenden McFarland, Section Manager  
Environmental Review and Transportation Section  
Shorelands and Environmental Assistance Program  
Department of Ecology

**ATTACHMENT A**

**Wildlands of Washington, Inc.  
Blackjack Creek Mitigation Project  
Water Quality Certification Order # 5749**

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

I, \_\_\_\_\_, state that, I will be involved as a Wildlands of Washington, Inc. employee or an agent or contractor for Wildlands of Washington, Inc. in the Blackjack Creek Mitigation project in Kitsap County, WA. I further state that I have read and understand the relevant conditions of Washington Department of Ecology **Water Quality Certification Order # 5749** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company