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

March 30, 2009

REGISTERED MAIL
RB 670 356 841 US

Whatcom County Public Works
Attn: Kirk Christensen and David Wilson
2011 Young St., Ste 201
Bellingham, WA 98225

RE: Water Quality Certification Order #6552 for U.S. Army Corps of Engineers (Corps) Reference #NWS-2008-790-NO to permanently fill 0.94 acres and temporarily fill 2.2 acres of Category I wetland to elevate a portion of Slater Road with a bridge structure. Enhance 8.37 acres of degraded agricultural wetland north of Slater road and restore 2.2 acres of temporarily impacted wetlands in Whatcom County, Washington

Dear Applicant:

On June 3, 2009, you 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 (CWA) for the proposed project.

The proposed project entails:

- Permanent fill of 0.94 acres of Category I emergent wetlands to elevate Slater Road with a bridge structure;
- Temporary fill of 2.2 acres for a bypass road during construction;
- Construction of stormwater facilities including rain gardens adjacent to the new roadway;
- Enhancing 8.37 acres of degraded agricultural wetland and restoring 2.2 acres of temporarily impacted wetland located adjacent to Slater Road.

The U.S. Army Corps of Engineers issued a joint public notice for an individual Section 404 on September 23, 2008 for the proposed project.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the JARPA and the September 23, 2008, 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.

If you have any questions, please contact Lori Lull at 425-649-7271, LENL461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Erik Stockdale

Erik Stockdale
401/Wetlands Unit Supervisor
Northwest Regional Office
Shorelands and Environmental Assistance Program

ES:lcl:cja

Enclosure

cc: Randel Perry, U.S. Army Corps of Engineers
Petur J. Sim, David Evans and Associates

e-cc: Tim Schlender, Ecology HQ
Loree' Randall, Ecology HQ
ecyrefedpermits@ecy.wa.

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Whatcom County Public Works in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	))))))))	**ORDER # 6552** **Corps Reference No. NWS-2008-790-NO** Permanently fill 0.94 acres and temporarily fill 2.2 acres of Category I wetland to elevate a portion of Slater Road with a bridge structure. Enhance 8.37 acres of degraded agricultural wetland north of Slater road and restore 2.2 acres of temporarily impacted wetlands in Whatcom County, Washington.

TO: Whatcom County Public Works
Attn: Kirk Christensen and David Wilson
2011 Young St., Ste 201
Bellingham, WA 98225

On June 03, 2008, Ecology received a Joint Aquatic Resources Permit Application (JARPA) from the Whatcom County Public Works requesting a 401 Water Quality Certification (WQC). The U.S. Army Corps of Engineers (Corps) issued a joint public notice for the project on September 23, 2008.

The proposed project entails:

- Permanent fill of 0.94 acres of Category I emergent wetlands to elevate Slater Road with a bridge structure;
- Temporary fill of 2.2 acres for a bypass road during construction;
- Construction of stormwater facilities including rain gardens adjacent to the new roadway;
- Enhancing 8.37 acres of degraded agricultural wetland and restoring 2.2 acres of temporarily impacted wetland located adjacent to Slater Road.

The project and associated mitigation is located in Whatcom County, Section 4 and 5, Township 38N, Range 2E, WRIA #1.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 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. §§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 quality standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve Whatcom County 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 Whatcom County Public Works, and its agents, assignees and contractors.

2. For purposes of this Order, all submittals required as conditions shall be sent to Ecology's Northwest Regional Office, Attn: Federal Project Coordinator, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall be identified with Order No. 6552 and Corps Reference No. NWS-2008-790-NO.

3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 3, 2009. 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 Corps does not issue a Section 404 permit.

6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.

7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.

8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.

9. The Applicant shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work 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 the 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.

10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.

11. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

B. **Wetland Compensatory Mitigation:**

1. The Applicant shall mitigate impacts to wetlands as described in the following documents:
   - *Revised Draft Mitigation Plan, Slater Road Elevation Project,* dated May 2008 and completed by David Evans and Associates,
   - *Letter dated February 9, 2009 and attached sheets 1 through 5 to Ecology's Susan Meyer from David Evans and Associates' Ed Miller.*

2. The Applicant shall submit a Final Wetland Mitigation Plan, including site grading, specific planting plans and a detailed monitoring plan at least 30 days prior to construction to Ecology's wetland specialist for review and approval.

3. To ensure proper installation, the Applicant's wetland professional must supervise and inspect all mitigation site construction and planting.

3. The Applicant shall ensure that no material is stockpiled within existing wetlands, streams or their buffers at the mitigation site at any time, unless included in the Ecology-approved Mitigation Plan.

4. Upon completion of site-grading and prior to planting, the Applicant shall submit to Ecology written confirmation that the finished grades are consistent with the approved Mitigation Plan or subsequent Ecology-approved plan changes. Written confirmation can be a signed letter from the surveyor or project engineer indicating how final elevations were confirmed and whether they are consistent with the plan.

Implementation

5. Within 90 days of completing construction and planting at the site, the Applicant shall submit an as-built report with maps to Ecology. The as-built report must:

   a. Document site conditions at Year Zero;
   b. Be submitted to Ecology per Condition A.2 with one electronic file and one hard copy;
   c. Include the information listed in Attachment B;
   d. Include documentation of a conservation easement

6. If the mitigation project is not completed within 13 months of this Order's date, the Applicant shall submit a written notification discussing the status of the development and mitigation projects and submit an updated written notification every 12 months until construction and planting are complete and the final as-built report is submitted.

7. The Applicant shall begin the compensatory mitigation project before or concurrent with impacts to wetlands or Ecology may require additional compensation to account for additional temporal wetland loss.

8. The Applicant shall not use Polyacrylamide as a temporary erosion control BMP on exposed or disturbed soil on the site.

9. If seeding is used as temporary erosion control BMP, it must be a wetland mix consisting of native, annual, non-invasive plant species.

10. The Applicant shall mark the wetland mitigation site boundary with signs every 100 feet. The signs should clearly indicate that trampling or cutting vegetation, placing fill or garbage, and any other activities that may disturb the wetland are prohibited.

Monitoring and Maintenance

11. The Applicant shall water and maintain all plantings at the restoration site to meet the Mitigation Plan's performance standards.

12. The Applicant shall monitor the mitigation site for a minimum of ten (10) years. Following submittal of as-built drawings (Year 0), monitoring shall occur in Year 1, Year 2, Year 3, Year 5, Year 7, and Year 10. The Applicant shall use the monitoring methods that will be described in the Final Mitigation Plan.

13. The Applicant shall submit monitoring reports to Ecology (one on compact disc or via email, and one hard copy [see A.2]) documenting site conditions at the mitigation site for each monitoring year. The monitoring reports must contain, at a minimum, the information in Attachment C.

14. The Applicant shall submit the Year One monitoring report no sooner than 12 months and no later than 24 months after submitting the as-built report.

15. The Applicant shall submit the reports for the remaining monitoring years no later than October 31 of the respective monitoring year.

16. The Applicant shall implement the Mitigation Plan's contingency measures if goals, objectives, and performance standards from page 30 in the Mitigation Plan or any conditions in this order are not being met.

17. Prior to implementing unidentified contingency measures, the Applicant shall consult with Ecology.

18. When necessary to meet the performance standards, the Applicant shall replace dead or dying plants with the same species, or a native plant alternative appropriate for the location, during the first available planting season and note species, numbers, and approximate locations of all replanted materials in the subsequent monitoring report.

19. At the end of the monitoring period, the Applicant shall use the annotated *August 2004 Washington State Wetlands Rating System for Western Washington* (or as updated) to rate all wetlands on the mitigation site, and include the information in the monitoring report.

20. If the Applicant has not met all the conditions and performance standards at the end of the monitoring period, Ecology may require additional monitoring and/or additional wetland compensatory mitigation.

21. The Applicant's responsibility to complete the required restoration as set forth in Condition C.1 of this order will not be considered fulfilled until they have received written verification from Ecology.

C. Timing Requirements:

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

D. Notification Requirements:

1. The Applicant shall provide written notification (FAX: 425-649-7271) or mail to Ecology's 401/CZM Federal Permit Coordinator, Northwest Regional Office, 3190 160th Avenue SE, Bellevue, WA 98008-5452, in writing at least three (3) days prior to the start of construction at the mitigation site.

2. The Applicant shall provide written notification to Ecology's Northwest Regional Office Federal Permit Coordinator in writing within fourteen (14) days after completion of mitigation.

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

F. Emergency/Contingency Measures

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.

2. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
   a. Cease operations that are causing the compliance problem.
   b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
   c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
   d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over

normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.

e. Immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990 of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.

3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands.

4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990.

G. Appeal Process:

You have a right to appeal this Order. 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:

Department of Ecology
Northwest Regional Office
Attn: Federal Permit Coordinator
3190 160th Avenue SE
Bellevue, WA 98008

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 March 30, 2009 at Bellevue Washington.

Erik Stockdale

Erik Stockdale, Unit Supervisor, 401/Wetlands
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A
(See Condition A9)

Whatcom County Public Works
Slater Road Elevation Project
Water Quality Certification Order #6552

Statement of Understanding of
Water Quality Certification Conditions

I have read and understand the conditions of Order #6552 Section 401 Water Quality Certification for the Slater Road Elevation Project. I have also read and understand all permits, plans, documents, and approvals associated with the Slater Road Elevation Project referenced in this Order.

_____ _____
Signature Date

_____
Title

_____
Company

Attachment B
Information for As-Built Reports
(See Condition B5)

Whatcom County Public Works
Slater Road Elevation Project
Water Quality Certification Order #6552
And
Corps Reference No. NWS-2008-790-NO

Background Information

1) Project name.
2) Ecology docket number and the Corps reference number.
3) Name and contact information for the parties responsible for the restoration site including:
    a) The applicant.
    b) The landowner.
    c) Wetland professional on site during construction of the restoration site.
4) Name and contact information for the party responsible for preparing the report.
5) Month and year the report was produced.

The Restoration Project

7) Brief description of the **final** restoration project with any changes from the approved plan made during construction. Include:
    a) Directions to the site.
    b) Who completed the restoration project (name, address, and phone number.
    c) Acreage and type(s) (re-establishment, rehabilitation, creation, enhancement, and preservation) of mitigation authorized to compensate for wetland impacts.
    d) Important dates including:
        i. Month and year the wetland impacts occurred.
        ii. When work on the restoration site began and ended.
        iii. When different activities began and ended such as grading, removal of invasive plants, installing plants, and installing habitat features.
8) Description of any problems encountered and solutions implemented (with reasons for changes) during construction of the restoration site.
9) Any changes to the goals, objectives, and performance standards of the restoration project.
10) List of any follow-up actions needed, with a schedule.
11) 8 1/2" X 11" (or larger) final site maps of the restoration site(s) including the following (at a minimum). The final site maps should reflect on-the-ground conditions after the site work is completed. Include the month and year when the maps were produced and, if applicable, when information was collected
    a) Geographic location of the site with landmarks.
    b) Clear delineation of the project perimeter(s).
    c) Topography (with a description of how elevations were determined),

d) Installed planting scheme (quantities, densities, sizes approximate locations, and the source(s) of plant material)
e) Location of habitat features.
f) Location of permanent photo stations.

12) Photographs of the site at as-built conditions taken from photo stations (photo pans are recommended).
13) Copies of any records of deed notification or conservation easements.

Attachment C
Required Information for Monitoring Reports
(See Condition B13)

Whatcom County Public Works
Slater Road Elevation Project
Water Quality Certification Order #6552
And
Corps Reference No. NWS-2008-790-NO

Ecology requires the following information, for monitoring reports submitted under this Order. Ecology will accept additional information that may be required by other regulators.

Background Information

1) Project name
2) Ecology docket number and Corps reference number
3) Name and contact information of the parties responsible for the mitigation site including:
    a) The applicant
    b) The landowner
4) Name and contact information for the party responsible for the monitoring activities and report
5) Who the report was prepared for (name, address, and phone number) {*if different from number 3 above.*}
6) Month and year the monitoring data were collected
7) Month and year the report was produced

Mitigation Project Information

8) Brief description of the mitigation project including:
    a) Directions to the site
    b) Acreage and type(s) (re-establishment, rehabilitation, creation, enhancement, and preservation) of mitigation authorized to compensate for wetland impacts
9) Brief description of monitoring approach and methods.
10) A list of the goals and objectives for the mitigation project
11) Summary table of monitoring data compared with performance standards. Using the monitoring data, describe how the site is developing toward goals and objectives and whether the project is in compliance with performance standards
12) Summary (including dates) of management actions (maintenance, contingencies, and corrective actions) implemented at the site(s)
13) Summary of any difficulties or significant events that occurred on the site that may affect the ultimate success of the project
14) Specific recommendations for any additional corrective actions or adaptive management with a time table
15) Summary of any lessons learned
16) 8 1/2" x 11" (or larger) maps of site(s) including, at a minimum, the following:

a) The month and year when the maps were produced and, if applicable, when information was collected
b) The geographic location of the site with landmarks.
c) Clear delineation of the project perimeter(s).
d) Species, numbers, and approximate locations of all replanted material vegetation.
e) Location of habitat features.
f) Location of permanent photo stations and location of any other photos.
g) Location of sampling points or transects.

17) Photographs taken at photo stations from the most recent monitoring visit, which are dated and clearly indicate the direction from which the photo was taken. (We recommend photo pans.)