



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

April 6, 2007

REGISTERED MAIL
RB 252 944 902 US

Lewis County Public Works
ATTN: Craig Swanson
350 N. Market Blvd.
Chehalis, WA 98532

RE: Water Quality Certification Order No. **4163** for Corps Public Notice No. 200601389 to construct the extension of Rush Road north from Bishop Road through the Port of Chehalis Industrial Park to connect to Maurin Road and on to Jackson Highway, Lewis County, Washington

Dear Mr. Swanson:

On November 7, 2006, Lewis County Public Works, 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 extension of Rush Road. The project proposes fill approximately 1.01 acres of wetland to extend Rush Road north from Bishop Road through to Maurin Road and on to Jackson Highway within the Port of Chehalis Industrial Park area. In addition to the road extension, the project will include the construction of associated utilities, culverts, storm water drainage systems. These impacts will be compensated for through a combination of wetland creation, enhancement and preservation on parcels of land contiguous with the project site. The U.S. Army Corps of Engineers issued a public notice on January, 19, 2007 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.



If you have any questions, please contact Lori Ochoa at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in black ink that reads "Paula Ehlers". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Paula Ehlers
Section Manager
Southwest Regional Office
Shorelands and Environmental Assistance Program

LO:th
Enclosure

cc: Sandra Manning, U.S. Army Corps of Engineers
Kernan Lien, Lewis County
Scott Brummer, WDFW

IN THE MATTER OF GRANTING A) ORDER # 4163
WATER QUALITY) Corps Reference No. 200601389
CERTIFICATION TO) Construct the extension of Rush Road from
Lewis County Public Works) Bishop Road through the Port of Chehalis
in accordance with 33 U.S.C. 1341) Industrial Park to connect to Maurin Road, Lewis
(FWPCA § 401), RCW 90.48.120, RCW) County, Washington.
90.48.260 and Chapter 173-201A WAC)
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TO: Lewis County Public Works
ATTN: Craig Swanson
350 N. Market Blvd.
Chehalis, Washington 98532

On November 7, 2006, Lewis County Public Works submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on January 19, 2007.

The purpose of the project is to extend Rush Road north from Bishop Road through to Maurin Road and on to Jackson Highway within the Port of Chehalis Industrial Park area. In addition to the road extension, the project will include the construction of associated utilities, culverts, storm water drainage systems, and the wetland mitigation area. The project is located approximately 1.5 miles southeast of the City of Chehalis at the southwest stub of Maurin Road, Lewis County, NE Section 15, Township 15 North, Range 2 West, WRIA No. 23, Lower Chehalis Watershed.

The project will impact 0.21 acres of Category III and 0.80 acres of Category IV wetlands, and 0.35 acres of impact will occur to five jurisdictional ditches that will need to be realigned.

Mitigation for project impacts will be compensated for through a combination of wetland creation, enhancement and preservation on parcels of land contiguous with the project site.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §1311, 1312, 1313, 1316, and 1317 (FWPCA § 301, 303, 306 and 307);

2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean Lewis County Public Works and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest Regional Office, Attn: Federal Permit Coordinator, SEA Program, P.O. Box 47775, Olympia, WA 98504-7775. Any submittals shall reference Order No. 4163 and Corps No. 200601389.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on November 7, 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.
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 a Section 404 permit.

6. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
7. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
8. 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.
9. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e g* , violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
10. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project.
11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation for each day of continuing noncompliance.

B. No Further Impairment of Existing Water Quality:

1. Certification of this proposal does not authorize the Applicants to exceed applicable state water quality standards (173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-200 shall apply to this project, unless otherwise authorized by Ecology.
2. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200(1)(e). Furthermore, nothing in this certification shall absolve the Applicants from liability for contamination and any

subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

3. Berwick Creek has been identified on the current 303(d) list of impaired water bodies for exceeding water quality standards for Fecal Coliform and pH. This proposed project shall not result in further exceedances of these parameters.

C. Water Quality Monitoring and Reporting Conditions:

1. During and immediately after project construction, the Applicant or their contractor shall visually monitor for turbidity discharges at the point of compliance established in WAC 173-201A-200(1)(e). If water quality exceedances are observed outside of the point of compliance, work shall cease immediately and the Applicant or the contractor shall assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further water quality turbidity exceedances. The Applicant or their contractor shall notify Ecology's Southwest Regional Office Federal Permit Coordinator at (360) 407-6926 of the exceedances.
2. If the results of the monitoring show that the water quality standards or project performance standards are not being met additional monitoring and mitigation may be required.
3. Any changes to the monitoring requirements must be approved in writing by Ecology.

D. Wetland Mitigation

1. Project mitigation shall be constructed and maintained as described in the *Wetland Mitigation Plan for Rush Road Extension, Chehalis, Washington* dated April 10, 2006 and as revised April 2007, or as otherwise approved by Ecology.
2. Any changes to the *Wetland Mitigation Plan* must be approved in writing by Ecology.
3. Compensatory mitigation construction and installation shall occur prior to or concurrently with, project impacts to wetlands.
4. All excess excavated material from the mitigation site shall be disposed of in an appropriate location outside of sensitive area and their buffers and shall be stabilized or contained so as to prevent its entry into waters of the state.
5. No materials shall be stockpiled within the wetlands or stream.
6. All earth areas that have been exposed or disturbed on the mitigation site shall be stabilized to prevent erosions by using mulch or an equivalent such as seeding with a suitable erosion control seed mix consisting of native, non-invasive plant species only.
7. All mitigation sites shall be monitored for a 10-year period following project construction. Additional monitoring of the mitigation area may be required by Ecology if wetland monitoring reveals that performance measures are not being met.

8. Wetland mitigation monitoring and maintenance shall be implemented as described in the *Wetland Mitigation Plan for Rush Road Extension, Chehalis, Washington* dated April 10, 2006 and as revised April 2007.
9. The Applicant is responsible for achieving the mitigation "Performance Standards" outlined in the *Wetland Mitigation Plan for Rush Road Extension, Chehalis, Washington* dated April 10, 2006 and as revised April 2007. These performance standards shall be met over the ten year monitoring period.
10. The property owner shall grant Ecology access to the mitigation areas for inspection during the 10 year monitoring period or until mitigation success has been achieved.
11. Contingency measures shall be implemented as identified on Page 21 of the *Wetland Mitigation Plan for Rush Road Extension, Chehalis, Washington* dated April 10, 2006 and as revised April 2007. Prior to implementing any contingency measures, applicant will consult with permitting agencies.
12. Any changes to the mitigation plan or monitoring requirements must be approved in writing by Ecology before they are incorporated into the plan or implemented on the ground.
13. **Deed Restriction:** Permanent protection of the wetland mitigation area and buffers shall be recorded on the property deed for the Wetland Mitigation Site as specified in the *Wetland Mitigation Plan for Rush Road Extension, Chehalis, Washington* dated April 10, 2006 and as revised April 2007. The deed shall clearly indicate that the wetland mitigation areas are "waters of the state". Documentation that this requirement has been fulfilled shall be provided to the Southwest Regional Office Federal Permit Coordinator as part of the "as-built" report.

E. Wetland Mitigation Reporting Conditions:

1. A detailed "As Built" report shall be prepared after construction showing any variances from the final mitigation plan. The "As-Built" shall be the baseline document used for all future monitoring of the mitigation project. It shall include but not be limited to:
 - comments from a wetland specialist present on site during mitigation construction;
 - final site plan showing site topography (both site plan view and typical sections) and clearly indicating the mitigation site boundary;
 - photographs of the area taken from permanent photo points which will be designated on the site plan;
 - the installed planting scheme showing densities, sizes, and approximate locations of plants as well as plant sources and time of planting; and,

- an analysis of any changes to the mitigation plan that occurred during construction.
- demonstration that the mitigation areas have been successfully established and that the "Additional Measures" have been implemented.
- documentation that the wetland mitigation area and buffers have been recorded on the property deed for the Wetland Mitigation Site.

Two copies of the "as-built" report and drawings shall be sent to Ecology's Southwest Regional Federal Permit Coordinator within 60 days of completing construction and planting, and in no case later than December 31, 2008.

2. Two copies of the mitigation monitoring reports shall be submitted to Ecology by December 31 of each monitoring year for years 1, 2, 3, 5, 7, and 10 and as further described in the *Wetland Mitigation Plan for Rush Road Extension, Chehalis, Washington* dated April 10, 2006 and as revised April 2007.

F. Construction Conditions:

1. During project construction the Applicant shall comply with all stormwater requirements within the current NPDES Construction Stormwater General Permit issued for this project.
2. The project area shall be clearly marked/staked prior to construction. Prior to clearing and grading any sensitive areas to remain undisturbed shall be protected from construction impacts. Sensitive areas and buffers that are to be protected from disturbance shall be clearly marked with bright orange construction fencing so as to be clearly visible to equipment operators. Clearing limits, travel corridors and stockpile sites shall be clearly marked. All project staff shall be trained to recognize construction fencing or flagging that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be altered. Equipment shall enter and operate only within the marked clearing limits, corridors and stockpile areas.
3. Appropriate Best Management Practices (BMP's) shall be implemented to minimize track-out during construction.
4. All work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.
5. 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 prior to the start of project construction and shall be maintained throughout construction until the site is stabilized.
6. All debris or deleterious material resulting from construction shall be properly contained and disposed of so that it cannot enter waters of the state.
7. Turbid water generated from construction activities, including turbid de-watering water, shall not be discharged directly to waters of the state, including wetlands. Turbid water shall be routed to an upland location to allow removal of fine sediment and other contaminants. Clean dewatering water 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 state waters, banks, or vegetation.

8. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters. All fueling areas shall be provided with adequate spill containment. Fueling equipment and vehicles within 50 feet of state waters and wetlands is not allowed.
9. The Applicant shall establish a separate contained area for washing down vehicles and equipment, which does not have any possibility of draining to surface waters and wetlands. Wash water containing sediments, oils, grease, or other hazardous materials resulting from wash down of the work area, tools, and equipment including concrete delivery trucks or other equipment used for concrete work shall not be discharged into state waters or storm drains.
10. No existing shoreline material (i.e., logs, rocks, gravel cobbles, woody debris, or other bed material) shall be relocated or used as bulkhead armor, as fill, or for any other purpose except that bed material located exactly where new pilings and footings are to be placed may be relocated.
11. All excess excavated material shall be disposed of above the 100-year floodplain and shall be contained so as to prevent its re-entry into waters of the state.

G. Timing:

1. This Order is valid until all compliance requirements in this document have been met.
2. In-water work shall be subject to the timing limitations imposed by the most current Hydraulic Project Approval (HPA) issued by the Washington Department of Fish and Wildlife's (WDFW) for this project.

H. Notification Conditions:

1. The Applicant shall provide written notification (FAX, e-mail or mail) to Ecology's Southwest Regional Office Federal Permit Coordinator in writing at least three (3) days prior to the start of construction at the project site.
2. The Applicant shall provide written notification to Ecology's Southwest Regional Office Federal Permit Coordinator in writing within fourteen (14) days after completion of construction.

NOTE: These notifications shall include the Applicant's name, project name, Order No. 4163, Corps Reference No. 200601389, project location, contact and contact's phone number.

I. Emergency/Contingency Measures:

1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of 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 Southwest Regional Spill Response Office at (360) 407-6300 and the Washington State 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. Submit a detailed written report to Ecology's Federal Permit Coordinator 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.

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.

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 Southwest Regional Spill Response Office at 360 407-6300.

J. 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

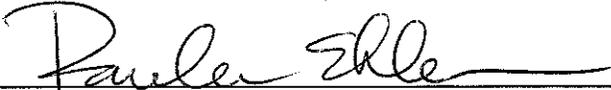
In addition, please send a copy of your appeal to:

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

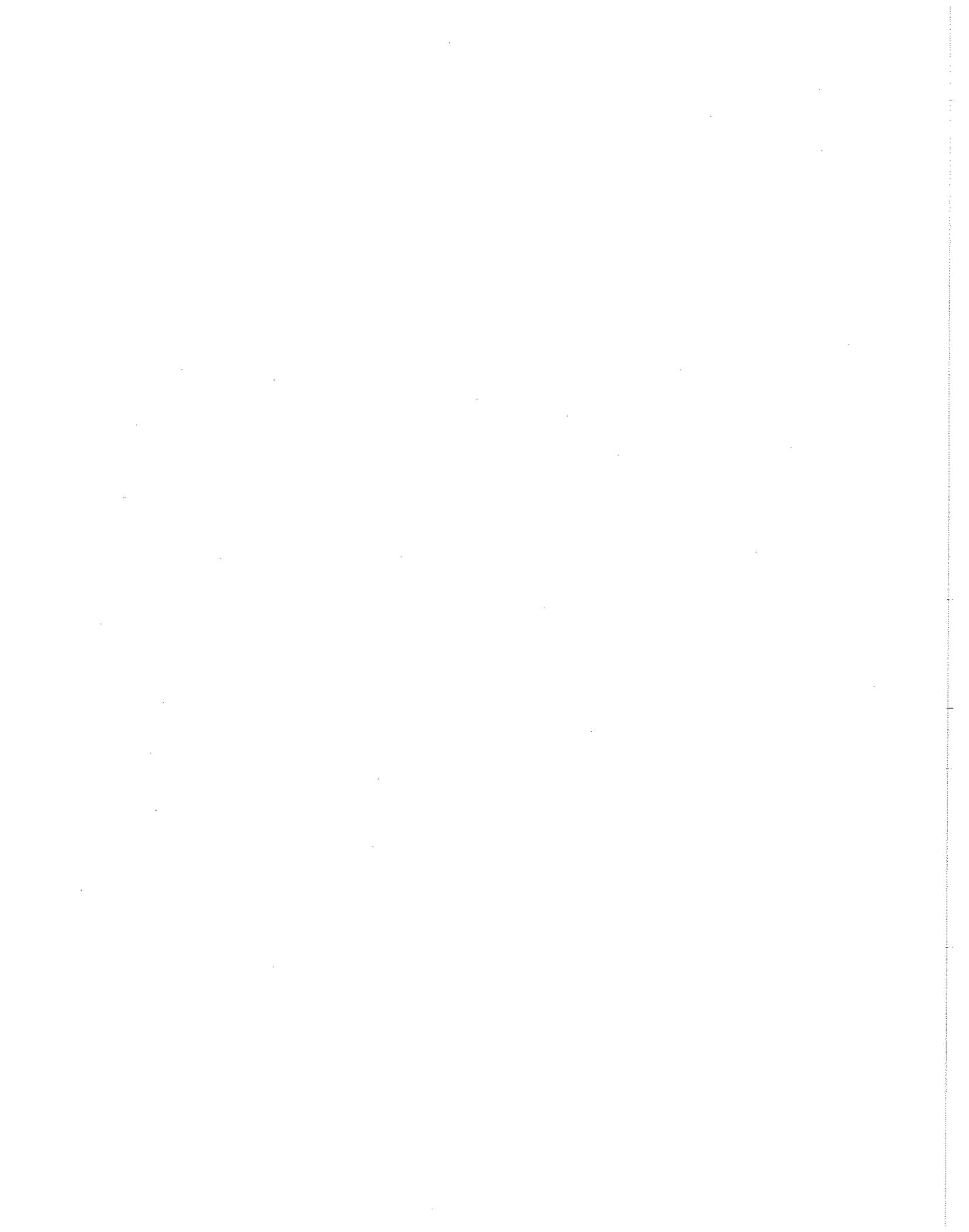
For additional information: Environmental Hearings Office Website. <http://www.eho.wa.gov>

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 4.6.07 at Lacey, Washington.



Paula Ehlers, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology, Southwest Regional Office
State of Washington



Attachment # A

Lewis County Public Works
Rush Road Extension
Water Quality Certification Order # **4163**

Statement of Understanding
Water Quality Certification Conditions

I, _____, state that, I will be involved as an agent or contractor for Lewis County Public Works in the construction of the Rush Road Extension located approximately 1.5 miles southeast of the City of Chehalis at the southwest stub of Maurin Road, Lewis County, Washington. I further state that I have read and understand the relevant conditions of the Washington Department of Ecology Water Quality Certification Order #**4163** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Phone

Company

