



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

September 21, 2007

REGISTERED MAIL
RB 252 946 510 US

Jeff Sawyer
Washington State Department of Transportation
PO Box 47417
Olympia WA 98504-7417

RE: Water Quality Certification Order # 4281 for Corps Public Notice No. 200700284 to Widen I-5 from 4 to 6 lanes from Milepost 87.45 to 95.68 between the Grand Mound and Maytown Interchanges, and lengthening or modifying the off-ramps at the Maytown Interchange, the Maytown and Scatter Creek Rest Areas, and the Grand Mound Interchange in Thurston County, Washington.

Dear Ms Michaliszyn:

On August 9, 2007, the Department of Transportation submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. The Army Corps of Engineers and Ecology issued a joint public notice regarding the request on March 20, 2007 pursuant to the provisions Chapter 173-225 WAC.

On behalf of the State of Washington, Ecology certifies that the work proposed in the JARPA Ecology received on August 9, 2007 and the joint public notice complies with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and other appropriate requirements of state law. This certification is subject to the conditions contained in the enclosed Order.

The enclosed Order may be appealed by following the procedures described in the Order.



*Grand Mound to Maytown
Corps No. 200700284 Order No.4281
September 21, 2007*

If you have any questions, please contact Lisa Rozmyn, the Federal Project Coordinator for this project, at (360) 407-7032 or lroz461@ecy.wa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brenden McFarland', with a long horizontal flourish extending to the right.

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

Enclosures

ecc: Sandra Manning, Corps of Engineers
Brad Murphy, Ecology, Southwest Region
Stacie Kelsey, WSDOT Olympic Region

IN THE MATTER OF GRANTING A) ORDER # 4281
WATER QUALITY) Corps Reference No. 200700284
CERTIFICATION TO) Widen I-5 from 4 to 6 lanes from Milepost 87.45
Washington State Department of) to 95.68 between the Grand Mound and
Transportation) Maytown Interchanges, and lengthening or
in accordance with 33 U.S.C. 1341) modifying the off-ramps at the Maytown
(FWPCA § 401), RCW 90.48.120, RCW) Interchange, the Maytown and Scatter Creek
90.48.260 and Chapter 173-201A WAC) Rest Areas, and the Grand Mound Interchange in
) Thurston County, Washington.

TO: Attn: Jeff Sawyer
Washington State Department of Transportation
PO Box 47417
Olympia WA 98504-7417

On August 9, 2007 the Washington State Department of Transportation (WSDOT) submitted a revised Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. The U.S. Army Corps of Engineers (Corps) distributed a joint public notice for the above-referenced project pursuant to Chapter 173-225 WAC on March 20, 2007.

The proposed project is located on Interstate 5 (I-5) in Thurston County and includes widening I-5 from 4 to 6 lanes between the Grand Mound and Maytown Interchanges for a distance of 8.2 miles, and lengthening or modifying the off-ramps at the Maytown Interchange, the Maytown and Scatter Creek Rest Areas, and the Grand Mound Interchange. The I-5 widening will result in the replacement of the bridges over Scatter Creek and the extension of several culverts. I-5 will also be realigned south of the Grand Mound Interchange to correct a sharp curve for safety, resulting in the construction of new bridges over Prairie Creek. Additional work includes improving the water supply system, upgrading the sanitary sewer, and adding parking at the Maytown Rest Area.

The proposed project is located in Water Resource Inventory Area (WRIA) 23 (Upper Chehalis). Work is located within or adjacent to tributaries to the Chehalis River including Scatter Creek, and Prairie Creek, a tributary to the Black River, Beaver Creek and one unnamed creek. Wetland impacts associated with this project include 1.124 acres of permanent wetland impact, 1.471 acres of temporary wetland impact and 0.48 acres of jurisdictional ditch impact in the median of I-5. Compensatory mitigation for wetland impacts associated with the roadway project will occur at the North Fork Newaukum Wetland Mitigation Bank with a total of 1.512 wetland mitigation credits debited from the bank. In addition, on-site mitigation will include replanting in all temporary wetland and buffer impact areas, as well as riparian restoration. Mitigation will occur as described in the "I-5 Grand Mound to Maytown Widening Draft Mitigation Plan" (mitigation plan) dated August 2007.

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 pre-treatment 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 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 Washington State Department of Transportation from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean the Washington State Department of Transportation and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required as conditions shall be sent to Department of Ecology Attn: Federal Project Coordinator – P.O. Box 47600, Olympia WA 98504-7600 Notifications shall be made via phone or e-mail (preferred). All submittals and notifications shall be identified with Order No. 4281 and include the Applicant's name, project name, project location, the project contact and the contact's phone number.

3. Work authorized by this Order is limited to the work described in the current 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 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 through supplemental order, if additional impacts due to project construction or operation are identified (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, workers 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 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. See Attachment A for an example.
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 per day for each day of continuing noncompliance.

B. Notification Requirements

1. Notification shall be made to Ecology's Federal Project Coordinator – P.O. Box 47600, Olympia WA 98504-7600, or email at lroz461@ecy.wa.gov for the following activities:
 - a. At least 10 days prior to the pre-construction meeting.
 - b. At least 10 days prior to the onset of initiating work on the project site.
 - c. At least 10 days prior to initial in-water activities.
 - d. Immediately following a violation of state water quality standards or conditions of this Order.

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

C. Construction Conditions

1. The Applicant shall comply with and implement the conditions of the National Pollutant Discharge Elimination System Waste Discharge Permit (NPDES Permit) Ecology issued for this project.
 2. Within the project limits,* 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. All field staff shall be trained to: recognize HVF; understand its purpose; and properly install it in the appropriate locations.
 - b. HVF shall be maintained until all work is completed for each project.
 3. All clearing limits, stockpile sites, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities.
- * Project limits include mitigation sites, staging areas, borrow sources, and other sites developed or used to support project construction.
4. Work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.

5. No petroleum products, fresh concrete, lime, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
6. Equipment used for any in-water work shall be free of external petroleum-based products, and this equipment shall be checked daily for leaks while working around water of the state. Any necessary repairs shall be completed prior to commencing work activities.
7. 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.
8. No contaminated soil or hazardous material shall be allowed to enter waters of the state. If at any time, the Applicant finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the Applicant shall immediately notify Ecology's Southwest Regional Spill Response Office at 360-407-6300.

D. Culvert Work

1. All culvert work shall be conducted in the dry or in isolation from stream flow. The stream diversion system shall be designed and operated so as to not cause erosion or scour in the stream channel or on the banks of the water body in which work is being conducted.
2. Prior to returning stream flow to the de-watered work area, all bank protection and/or armoring shall be completed.
3. Temporary sediment traps shall be cleaned out and the settled sediments removed from stream channel before removing any stream diversion system and returning the flow of the stream to its natural channel. Settled sediments shall not be allowed to enter waters of the state, including wetlands, due to water or runoff flows that may occur during or after construction is completed.
4. Reintroduction of waters to the channel shall be done gradually and at a rate not higher than normal stream flow in order to minimize the mobilization of sediments and fines into downstream waters.
5. Upon completion of the project, all materials used in the temporary bypass, or other method of work area isolation, shall be removed from the stream and stream buffer. The work area shall then be restored per the August 2007 mitigation plan.

6. Culverts shall be installed and maintained to avoid stream scouring and to prevent erosion of stream banks within and downstream of the project.

E. Wetland and Stream Mitigation and Monitoring

1. Mitigation will comply with all requirements associated with the Mitigation Banking Instrument (MBI) "*North Fork Newaukum Mitigation Banking Instrument*", signed by the Army Corps of Engineers on April 4, 2005, permit reference 2001-4-00182.
2. Prior to impacts to wetlands, including buffers, associated with the construction of the project, the Applicant shall submit a copy of the official bank ledger indicating that 1.512 wetland mitigation credits have been debited for the wetland mitigation of this project. If the Applicant cannot provide evidence that the ledger has been completed, the Applicant shall contact Ecology for approval of an alternative wetland mitigation proposal prior to impacting any wetlands, including buffers, associated with the project.
3. On-site mitigation will include replanting in all temporary wetland and buffer impact areas, including riparian areas, and monitored as described in the August 2007 mitigation plan.
4. On-site Category I forested restored areas will be monitored for successful plant establishment for a period of 10 years, the emergent areas will be monitored for 5 years unless plants are not surviving. If mitigation is not meeting stated performance standards, WSDOT shall contact Ecology's Federal Project Coordinator to determine appropriate adaptive management steps.

G. Reporting Requirements

1. A detailed "as built" report shall be prepared after the on-site mitigation construction showing any variances from the August 2007 mitigation plan. The "as-built" shall be the baseline document used for all future monitoring of the mitigation. 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.

- an analysis of any changes to the mitigation plan that occurred during construction.

Two (2) copies of the “as-built” report and drawings shall be sent to Ecology’s Headquarters Office Attn: Federal Project Coordinator at P.O. Box 47600, WA 98504 within 60 days of completing construction and planting. “As-built” submittals shall reference Order No. 4281 and Corps no. 200700284.

2. Two copies of the mitigation monitoring reports shall be submitted to Ecology by December 31 of each monitoring year.

H. Timing

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

I. Emergency/Contingency Measures

1. The Applicant shall develop a spill prevention and containment plan for all aspects of this project.
2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to an emergency release of petroleum products or any other material into waters of the state.
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 waters of the state.
4. 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 such work occurs, the Applicant shall comply with WSDOT’s Environmental Compliance Assurance Procedure for Construction Projects and Activities and immediately take the following actions:
 - a. Cease operations at the location of the violation.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. In the event of 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 be proper disposal of any spilled material and used cleanup materials.

- d. Notify Ecology of the failure to comply. Immediately notify Ecology's Southwest Regional Spill Response Office at 360-407-6300, **and** within 24 hours of spills or other events to Ecology's Federal Project Coordinator at (360) 407-7032.
- e. 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.

J. 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:		Deliver your appeal in person to:
The Pollution Control Hearings Board		The Pollution Control Hearings Board
PO Box 40903	OR	4224 – 6th Ave SE Rowe Six, Bldg 2
Olympia, WA 98504-0903		Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:		Deliver your appeal in person to:
The Department of Ecology		The Department of Ecology
Appeals Coordinator	OR	Appeals Coordinator
P.O. Box 47608		300 Desmond Dr SE
Olympia, WA 98504-7608		Lacey, WA 98503

3. And send a copy of your appeal to:

Lisa Rozmyn
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

*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 21st day of September, 2007 at Olympia, Washington.



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

ATTACHMENT A

**Washington State Department of Transportation
Water Quality Certification Order #4281**

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

I have read and understand the conditions of Order #4281 Section 401 Water Quality Certification for the I-5 Grand Mound to Maytown widening Project. I have also read and understand all permits, plans, documents, and approvals associated with the I-5 Grand Mound to Maytown widening Project referenced in this order.

Signature

Date

Title

Company