

IN THE MATTER OF GRANTING A)	ORDER # 6846
WATER QUALITY)	Corps Reference No. NWS-2008-1205
CERTIFICATION TO)	Bridging of Lincoln Ave over railroad tracks,
Port of Tacoma)	widening the lanes, and adding center turn lanes,
in accordance with 33 U.S.C. 1341)	lane separators, and shoulders. 0.38 of an acre of
(FWPCA § 401), RCW 90.48.120, RCW)	wetland will be filled in Lincoln Ditch, Pierce
90.48.260 and Chapter 173-201A WAC)	County, Washington

TO: Mr. Robert Brenner
 Port of Tacoma
 P.O. Box 1837
 Tacoma WA 98401

On April 1, 2009 the Port of Tacoma submitted a revised Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on April 21, 2009.

The overall project involves bridging Lincoln Avenue's two lanes up and over the sets of railroad tracks running parallel to Milwaukee Way, widening Lincoln Avenue's two 11-foot lanes to 12 feet, and adding center turn lanes, lane separators, and shoulders. Long term plans (20 to 40 years out, according to the Port of Tacoma) call for widening the bridge and the Lincoln Avenue corridor to 4 and 5 lanes. The work begins at the bridge's north abutment, which is to be placed almost halfway into the Lincoln Avenue Ditch (see Station 38+49.37 on drawing sheet 3 and point A on drawing sheet 7). The abutment begins an 1100-foot northward run of Lincoln Avenue with the road partially in the Lincoln Avenue Ditch, widening an average of 15 feet laterally into the ditch-based wetland. For the last 200 feet, the fill encroachment tapers down to the existing fill as the roadbed to be widened drops the shoulder to avoid closeness to railroad tracks on the southeast side of the road. In all, 0.38 acre (16,500 square feet) of wetland would be filled.

The purpose of this work is to improve traffic flow and safety along Lincoln Avenue by eliminating the at grade railroad crossings.

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 the Port of Tacoma and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Headquarters Office, Attn: 401/CZM Federal Permit Coordinator, P.O. Box 47600 Olympia, WA 98504-7600. Any submittals shall reference Order #6846 and Corps Reference # NWS-2009-1205-SO.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Protection Application (JARPA) received by Ecology on April 1, 2009. The Applicant will be out of compliance with this Order and must submit an updated JARPA 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. 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.
6. The Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
7. 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.
8. 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.
9. 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.
10. 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. Water Quality Conditions:

1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200(1)(e)(i)(D).

C. Construction Requirements:

1. During construction, the Applicant shall comply with all requirements in the current NPDES Construction Stormwater General Permit No. WAR-009185 and the best management practices (BMPs) in the Stormwater Pollution Prevention Plan (SWPPP) dated December 2008 developed for this project.

2. All construction debris, sediment, and other solid waste shall be properly managed and disposed of in an approved upland site.
3. No petroleum products, fresh concrete, toxic or other deleterious materials shall be allowed to enter waters of the state.
4. All forms used for concrete shall be completely sealed and all concrete shall be completely cured prior to coming into contact with waters of the state.
5. Any contact water discharged from a confined area with curing concrete shall be conveyed to an upland area to be treated and infiltrated, or disposed of appropriately with no possible entry into waters of the state including wetlands without proper treatment.
6. Sediment control BMPs shall be regularly inspected and maintained prior to and during construction.
7. Machinery and equipment shall be serviced, fueled and maintained upland in order to prevent contamination of any water of the state.
8. All water removed/pumped from cofferdams surrounding the drilled shafts in the wetlands shall be treated prior to discharge into any waters of the state.

D. Wetland Compensatory Mitigation Conditions

1. The Applicant shall mitigate wetland impacts as described in the *Revised Lincoln Avenue Grade Separation Project Revised Compensatory Wetland Mitigation Plan, COE Reference No. NWS-2008-1205* (hereafter called the "Mitigation Plan") prepared by Grette Associates and dated May 15, 2009, or as modified by this Order or revised and approved by Ecology.
2. The Applicant shall submit any changes to the Mitigation Plan in writing to Ecology (see A.2) for review and approval before work begins.
3. The Applicant shall get review and written approval from Ecology of any plan changes required if problems arise during construction and planting of the wetland mitigation site.
4. The Applicant shall have a wetland professional at the wetland mitigation site during construction and planting.

Implementation

5. Unless otherwise approved by Ecology in writing, the Applicant shall begin the compensatory mitigation project in accordance with the timeline described in the Mitigation Plan dated May 15, 2009.

6. The Applicant shall ensure that all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers **at the wetland mitigation site** and above the 100-year floodplain.
7. The Applicant shall ensure that no material is stockpiled within existing wetlands and their buffers at the **wetland** mitigation site(s) at any time, unless provided for in the Ecology-approved Mitigation Plan.
8. The Applicant shall ensure that no construction debris is deposited within existing wetland and their buffers at the wetland mitigation site(s) at any time, unless provided for in the Ecology approved Mitigation Plan.
9. The Applicant shall not use Polyacrylamide on exposed or disturbed soil at the mitigation site(s).
10. The Applicant shall not use hay or straw on exposed or disturbed soil at the mitigation site(s).
11. If seeding is used at the wetland mitigation site, the seed mix must contain native, annual, non-invasive plant species.
12. The Applicant shall place signs at the mitigation area boundaries, including buffers, every 50 feet to mark the area as a wetland mitigation site.
13. 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 in the form of a signed letter from the surveyor or project engineer indicating how final elevations were confirmed and whether those elevations are consistent with the Mitigation Plan.
14. Within 90 days of completing construction and planting of the mitigation site(s), the Applicant shall submit to Ecology (see A.2) one hard copy and one electronic file of the final as-built report including maps. The as-built report must:
 - a) Document site conditions at Year Zero.
 - b) Include the information listed in Attachment B (Information Required for As-built Reports).
 - c) Include documentation of the recorded legal mechanism required in Condition D15.

15. Within 90 days of completing construction and planting of the Lincoln Avenue Grade Separation (LAGS) Mitigation Site, the Applicant shall record a Wetlands Notice (see Attachment C): The Notice must be recorded with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.

Monitoring and Maintenance

16. The Applicant shall water and maintain all mitigation site plantings so as to meet the Mitigation Plan's performance standards.
17. The Applicant shall monitor the mitigation site for a minimum of 10 years. The Applicant shall use the monitoring methods described on pages 31-39 of the Mitigation Plan.
18. The Applicant shall submit to Ecology (see A.2) one hard and one electronic copy of monitoring reports documenting mitigation site conditions for years 1, 2, 3, 5, 7, and 10. At a minimum, the reports must contain the information in Attachment D (Information Required for Monitoring Reports). The Applicant shall submit the first monitoring report 12 months after completing the mitigation site construction and planting.
19. The Applicant shall implement the Mitigation Plan's contingency measures if the Mitigation Plan's goals, objectives, or performance standards are not being met.
20. Prior to implementing contingency measures not specified in the Mitigation Plan, the Applicant shall consult with **and obtain written approval from Ecology for the changes.**
21. When necessary to meet the performance standards, the Applicant shall replace dead or dying plants with the same species, or an appropriate native plant alternative, during the first available planting season and note species, numbers, and approximate locations of all replacement plants in the subsequent monitoring report.
22. For monitoring years five (5) and ten (10) the Applicant shall use the 1997 or updated versions of the "Washington State Wetlands Identification and Delineation Manual" to delineate all compensatory wetlands and include delineation information (e.g. data sheets, maps, etc.) in the monitoring reports.
23. At the end of the monitoring period, the Applicant shall use the August 2004 or updated version of "Washington State Wetlands Rating System for Western Washington" to rate all wetlands (except those that have been preserved) and include the information in the monitoring report.

24. If the Applicant has not met all conditions and performance standards for the mitigation site at the end of the monitoring period, Ecology may require additional monitoring, additional mitigation, or both.
25. Until the Applicant has received written notice from Ecology that the Mitigation Plan has been fully implemented, the Applicant's obligation under Condition D.1 to mitigate for wetland impacts is not met.

E. Timing Requirements:

1. All in-water work shall be completed by the work window identified in the most current HPA issued for this project. Any project change that requires a new or revised HPA should also be sent to Ecology for review.
2. This Order is valid until all compliance requirements in this document have been met.

F. Notification Requirements:

1. The Applicant shall provide notice to Ecology's 401/CZM Federal Permit Coordinator at least 7 days prior to the start of construction and within 14 days after completion of construction at the project site. Notification should be made using all the information required in Condition A2.

G. 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, 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 **and** within 24 hours of spills or other events Ecology's 401/CZM Federal Permit Coordinator at (360) 407-6076.
 - f. 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.
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 using the above phone numbers.

H. 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

Deliver your appeal in person to:

OR 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
Shorelands and Environmental Assistance Program
Attn: Helen Pressley
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 June 4, 2009 at Lacey, Washington.



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