



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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April 6, 2009

Carrie Berry  
Department of Transportation  
Olympic Region – HOV Project Office  
P.O. Box 47376  
Olympia, WA 98504-7440

RE: Water Quality Certification Order #6563 for Corps Public Notice No. NWS-2008-1445-SOD for I-5 Port of Tacoma Road to King County Line HOV project in Pierce County, Washington.

Dear Ms. ~~Berry~~: *Carrie*

On November 13, 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 I-5 Port of Tacoma Road to King County Line HOV project. The project proposes to add HOV lanes in the median of I-5 from MP 135.96 to MP 139.85 in Pierce County, Washington. This project will result in 2.86 acres of permanent wetland impacts through excavation and fill to construct the HOV Lanes. These impacts will be mitigated at the Spring Valley Advanced Mitigation Site. The U.S. Army Corps of Engineers issued a joint public notice for the project on December 3, 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. This certification is subject to the conditions contained in the enclosed Order.



Department of Transportation  
I-5 Port of Tacoma Road to King County Line HOV and 401 Certification order#6563  
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If you have any questions, please contact Penny Kelley, Federal Project Coordinator, at 360-407-7298 or by e-mail at [pkel461@ecy.wa.gov](mailto:pkel461@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



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

BM:pk  
Enclosure

e-cc: Stephanie Jackson, Ecology  
Caroline Corocran, Ecology  
Bobb Nolan, Ecology  
Sandi Manning, Corps of Engineers  
Gina Piazza, Department of Fish & Wildlife  
Patrick Svoboda, Department of Transportation  
Loree' Randall, Ecology HQ  
[ecyrefedpermit@ecy.wa.gov](mailto:ecyrefedpermit@ecy.wa.gov)

**IN THE MATTER OF GRANTING A ) ORDER # 6563**  
**WATER QUALITY ) Corps Reference No. NWS-2008-1445-SOD**  
**CERTIFICATION TO ) Add HOV lanes in the median of I-5 from MP**  
Washington Department of ) 135.96 to MP 139.85 located in Pierce and King  
Transportation ) Counties  
in accordance with 33 U.S.C. 1341 )  
(FWPCA § 401), RCW 90.48.120, RCW )  
90.48.260 and Chapter 173-201A WAC )

TO: Carrie Berry  
Department of Transportation  
P.O. Box 47376  
Olympia, WA 98504-7440

On November 13, 2008, Ecology received a Joint Aquatic Resources Permit Application (JARPA) from the Washington State Department of Transportation (WSDOT) requesting a 401 Water Quality Certification (WQC). The U.S. Army Corps of Engineers (Corps) issued a joint public notice for the project on December 4, 2008.

The proposed project entails adding a High Occupancy Vehicle (HOV) lane along a 3.89 mile stretch of I-5 from the King/Pierce County line near Milton to the Port of Tacoma Road Interchange at the City of Fife. The new HOV Lanes will be constructed in the existing median of I-5. Other project elements include improving the 54<sup>th</sup> Ave east interchange adding ramp metering and HOV bypass lanes, widening existing bridges where I-5 crosses three different streams within the project limits, extending existing culverts and constructing permanent stormwater facilities. To compensate for impacts to existing wetlands and floodplain, WSDOT will provide wetland mitigation at the Spring Valley Advanced mitigation site and construct a floodplain mitigation site.

The project starts at milepost 135.96 and ends at milepost 139.85 on I-5 in Pierce and King Counties, WRIA 10-Puyallup/White.

Section	Township	Range
11, 12	20N	3East
5, 6, 7	20N	4 East
32	21N	3 East

**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 WSDOT 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 WSDOT, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required as conditions shall be sent to Ecology's HQ, Attn: Federal Permit Coordinator, P.O. Box 47600, WA 98506 or via e-mail (preferred), if possible, to the Coordinator assigned to this project. Notifications shall be made via phone or e-mail (preferred). All submittals and notifications shall be identified with Order No. 6563 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 JARPA received by Ecology on November 13, 2008. 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 an individual 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 each signatory that s/he has read and understands the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins.
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 the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

**B. Water Quality Criteria and Monitoring**

1. Ecology acknowledges with the Applicant that this project is essential to improve safety and reduce congestion through the I-5 Corridor. In granting the mixing zones below, Ecology finds that the Applicant’s supporting information clearly indicates that the mixing zones do not have a reasonable potential to: 1) cause a loss of sensitive or important habitat; 2) substantially interfere with the existing or characteristic uses of the West Hylebos creek or Surprise Lake Tributary; 3) result in damage to the ecosystem; and 4) adversely affect public health.

**A 500 foot mixing zone for turbidity shall apply as follows:**

<b>Waterbody</b>	<b>Activity</b>	<b>Maximum Duration</b>
West Hylebos Creek	Bridge Pier Construction – installation and removal of in-water work BMPs	Intermittently for 1.5 months during the approved fish window

**A 700 foot mixing zone for turbidity shall apply as follows:**

<b>Waterbody</b>	<b>Activity</b>	<b>Maximum Duration</b>
Surprise Lake Tributary	Floodplain mitigation Site – installation and removal of in-water work BMPs	Intermittently for 1.5 months during the approved fish window

2. At least 20 days prior to commencing in-water work, the Applicant shall submit a Water Quality Monitoring and Protection Plan (WQMPP) to the Federal Project Coordinator for review and approval. **In-water work shall not begin until Ecology approves the WQMPP.**
  - a. At a minimum, the WQMPP shall include:
    - i. The name(s) and phone numbers(s) of the Pollution Control inspector and the person responsible for on-site monitoring and reporting;
    - ii. The BMPs and procedures to be used to protect water quality during specific proposed in-water activities;
    - iii. A water sampling plan for turbidity;
    - iv. A map with numbered or named sampling locations associated with the in-water activities that require monitoring;
    - v. A background sample shall be collected at the beginning of each sampling event.
  - b. Ecology must approve, in writing, any changes or additions to the WQMPP.
  - c. Monitoring results shall be submitted monthly to the Ecology Federal Project Coordinator, per condition A.2.

- d. Mitigation and/or additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.

### **C. Floodplain Mitigation Site**

1. The Applicant shall conduct monitoring for the Floodplain Mitigation Site as proposed in the *Hydrologic Monitoring Plan for the I-5 Port of Tacoma Road to King County Line HOV Project Floodplain Mitigation Site* dated January 9, 2009.
2. Any changes to the design or monitoring for the Floodplain Mitigation Site shall be submitted to Ecology for review and approval in accordance with condition A.2.
3. Within 90 days of completing construction and planting at the Site, the Applicant shall submit a final as-built report for the Floodplain Mitigation Site with maps to Ecology, one hard copy and electronic file, per condition A.2.
4. The as built report must document site conditions at Year Zero and include the information listed in Attachment B.
5. If the Floodplain Mitigation Site is not completed within 13 months of this Order's date, the Applicant shall submit a written notification providing a status update on the development of the site and submit an updated written notification every 12 months until construction and planting are complete and the final as-built report is submitted.
6. All monitoring reports for the Floodplain Mitigation Site shall be submitted to Ecology in accordance with A.2.

### **D. Wetland Compensatory Mitigation**

- 1 The Applicant shall mitigate wetland impacts as described in the *I-5: Port of Tacoma Road to King County Line – HOV Final Wetland and Stream Mitigation Plan* (hereafter called the "Mitigation Plan") prepared by Tacoma HOV Program WSDOT/GEC Wetlands Team, dated March 20, 2009.
- 2 The Applicant shall submit any changes to the Mitigation Plan in writing to Ecology (see A.2) for review and approval.

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

## **E. Construction Conditions**

1. The Applicant shall comply with the conditions of the current Construction Stormwater permit (National Pollutant Discharge Elimination System – NPDES) issued for this project.
2. Within the projects 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.*
3. All field staff shall be trained to recognize HVF, understand its purpose and properly install it in the appropriate locations. HVF shall be maintained until all work is completed for each project or each stage of a staged project.
4. All clearing limits, stockpiles, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities and maintained until all work is completed for each project.
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.
7. Turbid De-watering water associated with in-water work shall not be discharged directly to waters of the state, including wetlands. Turbid de-watering water shall be routed to an upland area for on-site or off-site settling.
8. Clean de-watering water associated with in-water work that has been tested and confirmed to meet water quality standards may be discharged directly to waters of the state including wetlands. The discharge outfall method shall be designed and operated so as not cause erosion or scour in the stream channel, banks, or vegetation.

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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.

### Equipment & Maintenance

9. 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 waters of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Coordinator before placing the staging area in the setback area.
10. 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.
11. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
12. 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.
13. 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.
14. No cleaning solvents or chemicals used for tool or equipment cleaning may be discharged to the ground or to waters of the state, including wetlands.
15. A separate area shall be set aside, which does not have any possibility of draining to surface waters, for the wash-out of concrete delivery trucks, pumping equipment, and tools.

### Bridge Widening

16. All demolition debris associated with bridge widening shall be properly managed and disposed of so as to prevent any discharge of this material into waters of the state, including wetlands.
17. If saw-cutting of concrete is needed for demolition of on-site structures, containment methods are required to control and contain all saw-cut water and debris. The saw-cut water shall be disposed of upland with no possibility of entry to waters of the state, including wetlands.

18. Under no circumstances shall free fall dumping of fill or bridge materials occur in or next to any water body unless control mechanisms are in place to prevent sediment from entering the water.
19. Riparian areas disturbed during construction shall be replanted with native vegetation immediately upon project completion. All access roads shall be removed where feasible, and stabilized prior to project completion.
20. All forms used for concrete shall be completely sealed to prevent the possibility of fresh concrete entering into waters of the state, including wetlands.
21. Concrete contact water shall not enter waters of the state, including wetlands. Any contact water discharged from a confined area with curing concrete shall be discharged to upland areas to be treated and infiltrated, or disposed of appropriately with no possible entry to state waters.

#### Stream Bypass

22. If a bypass is used for in-water work, the following conditions apply to work occurring on Hylebos Creek, West Hylebos Creek, and Surprise Lake Tributary.
23. Any temporary bypass or stream diversion system shall be in place prior to initiation of work of in-water work.
24. Any stream diversion or bypass shall be designed and operated so that it does not cause erosion or scour in the stream channel or on the banks of the water where in-water work is being done.
25. Prior to returning stream flow to the work area, all bank protection measures shall be in place.
26. Reintroduction of water to the 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.
27. Upon completion of the in-water work in a given area within the project site, all materials used in the temporary bypass or stream diversion shall be removed from the site and placed in an approved upland site.

#### **F. Timing Requirements**

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

2. In-water work is subject to a fishery closure window determined by the Washington Department of Fish and Wildlife's Hydraulic Project Approval (HPA). All in-water work shall be completed by the work window identified in the most current HPA issued for this project.

#### **G. Notification Requirements**

1. Notification shall be made to Ecology's Federal Project Coordinator in accordance with condition A.2 for the following activities:
  - a. At least 10 days prior to the preconstruction 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.

#### **H. Emergency and 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 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 Southwest Regional Spill Response Office at 360-407-6300 and Department of Fish and Wildlife of the nature of the problem, any actions taken to correct the problem, and proposed changes in operations to prevent further problems;
  - f. Immediately notify the National Response Center at 1-800-424-8802 for spills to water.

## **I. 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 & Application for Relief  
Coordinator  
PO Box 47608  
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology  
Appeals & Application for Relief  
Coordinator  
300 Desmond Dr SE  
Lacey, WA 98503

### **3. And send a copy of your appeal to:**

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

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*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://www.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 6th day of April, 2009 at Lacey, Washington.



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

**Attachment A**  
**Water Quality Certification Order #6563**  
**Statement of Understanding**

I, \_\_\_\_\_, state that, I will be involved as a WSDOT employee or an agent or contractor for Washington State Department of Transportation in I-5 Port of Tacoma Road to King County Line HOV project in Pierce County, WA. I further state that I have read and understand the relevant conditions of Washington Department of Ecology **Water Quality Certification Order # 6563** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company

\_\_\_\_\_  
Phone number

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, and Zip Code

**Attachment B**  
**Information for As-built Reports**  
**(See Condition D. 12)**

I-5 Port of Tacoma Road to King County Line HOV  
Water Quality Certification Order # 6563  
And  
Corps Reference # NWS-2008-1445-SOD

**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 mitigation site including:
  - a) The applicant;
  - b) The landowner;
  - c) Wetland professional on site during construction of the compensatory mitigation site.
- 4) Name and contact information for the party responsible for preparing the report.
- 5) Who the report was prepared for (name, address, and phone number) *{if different from number 3 above.}*.
- 6) Month and year the report was produced.

**The Project Site**

- 7) Brief description of the development project. Include:
  - a) Project Location;
  - b) Month and year construction of the development project started and ended.

**The Floodplain Mitigation Site**

- 8) Brief description of the **final** project with any changes from the approved plan made during construction. Include:
  - a) Directions to the site;
  - b) Who completed the project (name, address, and phone number);
  - c) Acreage;
  - d) Important dates including:
    - i. Month and year the transportation project occurred;
    - ii. When work on the floodplain mitigation site began and ended;
    - iii. When different activities began and ended such as grading, removal of invasive plants, installing plants, and installing habitat features.
- 9) Description of any problems encountered and solutions implemented (with reasons for changes) during construction of the floodplain mitigation site.
- 10) List of any follow-up actions needed, with a schedule.
- 11) Final site maps (8 1/2" x 11" or larger) of the site(s) including the following (at a minimum):
  - 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, and approximate locations of plants, as well as the source(s) of plant material).
- 12) 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.
- 13) Photographs of the site at as-built conditions – we recommend photo pans.