



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

February 19, 2009

CERTIFIED MAIL
70042510000405514950

Allison Hanson
Department of Transportation
Urban Corridors Office
401 2nd Ave South Suite 400
Seattle, WA 98104

RE: Coastal Zone Management Consistency Determination for the SR 167 8th Street to 277th Street HOT Lane transportation project in the cities of Auburn, Algona, and Pacific in Pierce and King Counties, Washington. County, Washington.

Dear Ms Hanson:

On January 14, 2009, the Washington Department of Transportation submitted Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, the Department of Ecology (Ecology) concurs with the Washington Department of Transportation determination that the proposed work is consistent with Washington's CZMP.

You also have the right to appeal this decision to the Pollution Control Hearings Board. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.



- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Penny Kelley
Department of Ecology
Ecology Headquarters
P.O. 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.

If you have any questions regarding Ecology's consistency determination please contact Penny Kelley at (360) 407-7298.

Sincerely,



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

cc: Bobb Nolan, Ecology
Richard Robohm, Ecology
Rebecca McAndrews, Corps of Engineers
Don Ponder, Department of Fish & Wildlife
Mike Sallis, Department of Transportation
Terry Drochak, Department of Transportation



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February 19, 2009

REGISTERED MAIL
RB 252946979US

Allison Hanson
Department of Transportation
Urban Corridors Office
401 2nd Ave South Suite 400
Seattle, WA 98104

RE: Water Quality Certification Order #6450 for Corps NWP 23, NWS-2008-1276-SOD for SR 167 in the cities of Auburn, Algona, and Pacific in Pierce and King Counties, Washington.

Dear Ms. Hanson:

On September 17, 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 SR 167 8th Street to 277th Street HOT Lane transportation project. The project proposes to construct a southbound High Occupancy Toll Lane starting at 8th Street and extending to 277th Street. Other project elements include installing a noise wall between 6th Ave N. in Algona and 5th Ave NW in Pacific, widening the southbound bridge over SR 18, and installing ramp meters and signals. Stormwater facilities will be constructed to provide water quality treatment and flow control and two culverts will be retrofitted, one conveying Jovita Creek and one conveying the Un-named tributary to Milwaukee ditch, to improve fish passage. The Department of Ecology issued a Public notice for this project on October 3, 2008. The U.S. Army Corps of Engineers issued a nationwide permit 23 for the project on January 15, 2009.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the Ecology 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
SR 167 8th St. to 277th St HOT Lanes - 401 Certification, Order# 6450
Page 2
February 19, 2009

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. 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: Bobb Nolan, Ecology
Richard Robohm, Ecology
Rebecca McAndrews, Corps of Engineers
Don Ponder, Department of Fish & Wildlife
Mike Sallis, Department of Transportation
Terry Drochak, Department of Transportation
Loree Randall, Ecology
ecyrefedpermit@ecy.wa.gov

IN THE MATTER OF GRANTING A) ORDER # 6450
WATER QUALITY) Corps Reference No. NWS-2008-1276-SOD
CERTIFICATION TO) Widen SR 167 to construct a southbound High
Washington Department of) Occupancy Toll Lane starting at 8th Street and
Transportation) extending to 277th Street. Jovita Creek, Un-
in accordance with 33 U.S.C. 1341) named Tributary to Milwaukee Ditch and Mill
(FWPCA § 401), RCW 90.48.120, RCW) Creek are located in the cities of Auburn,
90.48.260 and Chapter 173-201A WAC) Algona, and Pacific in Pierce and King Counties
) in Washington.

TO: Allison Hanson
Department of Transportation
Urban Corridors Office
401 2nd Ave South Suite 400
Seattle, WA 98104

On September 17, 2008, Ecology received a Joint Aquatic Resources Permit Application (JARPA) from the Washington Department of Transportation (WSDOT) requesting a 401 Water Quality Certification (WQC). Department of Ecology (Ecology) issued a public notice for the project on October 3, 2008. The Corps of Engineers issued a Section 404 NWP 23, Permit # NWS-2008-1276-SOD on January 15, 2009.

The proposed project entails widening SR 167 to construct a southbound High Occupancy Toll (HOT) Lane starting at 8th Street and extending to 277th Street South. Other project elements include installing a noise wall between 6th Ave N. in Algona and 5th Ave NW in Pacific, widening the southbound bridge over SR 18, and installing ramp meters and signals. Stormwater facilities will be constructed to provide water quality treatment and flow control and two culverts will be retrofitted, one conveying Jovita Creek and one conveying the Un-named tributary to Milwaukee ditch, to improve fish passage. As part of the stormwater design for this project, WSDOT is also designing an alternative stormwater facility, referred to as Site C Floodplain Storage Unit, located in the city of Auburn, west of SR 167 between SR 18 and West Main Street. This facility, which is different from a traditional stormwater detention facility, is being constructed to provide flood storage adjacent to Mill Creek to offset potential impacts caused by increased runoff from the new road lane.

The project is located in the cities of Auburn, Algona, and Pacific in Pierce and King Counties, WRIA 9 Green River and WRIA 10 White River, Washington State.

SECTION/TOWNSHIP/RANGE

036 22N 4E 001 21N 4E
012 21N 4E 013 21N 4E
014 21N 4E 023 21N 4E
026 21N 4E 035 21N 4E
002 20N 4E

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 Project Coordinator, P.O. Box 47600, Olympia, WA 98504-7600 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. 6450 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 September 17, 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. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers, lead workers, and state and local government inspectors.
6. 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.
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 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.
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 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. 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 project limits¹ 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 or each stage of a staged project.
3. All clearing limits, stockpile sites, 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.
4. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
5. Staging areas shall be located a minimum of 50 feet from waters of the state, including wetlands. If a staging area must be located within 50 feet of a water of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Project Coordinator before placement of the staging area in the setback area.
6. All construction debris shall be properly managed and disposed of in an approved upland disposal site.

Equipment & Maintenance

7. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulated soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of the equipment prior to its use around waters of the state, including wetlands.

¹ Project limits include mitigation sites, staging areas, borrow sources, and other sites developed or used to support project construction.

8. 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.
9. Wash water containing oils, grease, or other hazardous materials resulting from washing down equipment or working areas shall not be discharged into state waters. The applicant shall set up a designated area for washing down equipment.
10. No cleaning solvents or chemicals used for tool or equipment cleaning may be discharged to the ground or to waters of the state.

Culvert/In-water Work/Concrete

11. The Applicant shall monitor all in-water work and implement BMPs applicable to in-water work as described in the *Water Quality Monitoring Plan for the 401 Water Quality Certification SR 167 8th Street East Vicinity to South 277th Street Vicinity Southbound HOT Lane Project MP 10.20 to MP 18.24* dated December 31, 2008. Any change to the water quality monitoring plan shall be submitted to Ecology for review and approval.
12. In addition to implementing the BMPs as described in the above referenced water quality monitoring plan, the Applicant shall also comply with the following:
 - a. 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.
 - b. 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 to cause erosion or scour in the stream channel, banks, or vegetation.
 - c. All materials used during work area isolation activities (e.g. temporary bypass) shall be removed when that activity is complete and disposed of in an approved upland disposal site.
13. If monitoring shows that concrete process/contact water does not meet water quality standards, WSDOT shall submit a treatment and monitoring plan to Ecology's Federal project Coordinator for approval prior to any discharges.
14. A separate area having no possibility of draining to surface waters shall be set aside for washing concrete delivery trucks, pumping equipment, and tools.

C. Stormwater & Wetlands:

1. The Applicant shall construct the Floodplain Storage Site C and associated wetland areas as described in the *Wetland and Stream Mitigation Report State Route 167 Southbound HOT Lane 8th Street E Vic. To S 277th Street Vic.* dated August 2008.
2. Any changes to the design, on-site mitigation, or monitoring for wetlands or stormwater shall be submitted to Ecology for review and approval in accordance with condition A.2.
3. The Applicant shall conduct monitoring as proposed in the *SR 167 8th Street E to S 277th Street Southbound HOT Lane Floodplain Storage Site Monitoring Plan* dated February 6, 2009.
4. Within 90 days of completing construction and planting at the site, the Applicant shall submit a final as-built report with maps to Ecology.

A. The as built report must:

1. Document site conditions at Year Zero
 2. Submit to Ecology per Condition A.2 and as an electronic file and one hard copy
 3. Include the information listed in Attachment B
 4. Include documentation of a Recorded Wetlands Notice
5. If the Floodplain Storage Site C is not completed within 13 months of this Order's date, the Applicant shall submit a written notification of the development and mitigation projects and submit an updated written notification every 12 months until construction and planting are complete and the final as-built report is submitted.
 6. All monitoring reports for Floodplain Storage Site C shall be submitted to Ecology in accordance with condition A.2
 7. The Applicant shall submit a final copy of the *Draft Type A Hydraulic Report* to Department of Ecology, attention Penny Kelley, prior to starting construction on Site C. The Applicant can submit the final draft on a CD (preferred), electronically or hard copy.

D. Timing Requirements:

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

E 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. At least 10 days prior to the onset of any work on Site C.
 - d. Immediately following a violation of the state water quality standards or conditions of this Order.

F. Emergency/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 comply with WSDOT's Environmental Compliance Assurance Procedure for Construction project and Activities (March 10, 2003) 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 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, containment and cleanup efforts shall begin immediately and be completed 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 Northwest Region for spills occurring in King County at 425-649-7000 and Ecology's Southwest Region for spills occurring in Pierce County at 360-407-6300.

- f. The notification must include information on the nature of the problem, actions taken to correct the problem, and any proposed changes in operations to prevent further problems.
- g. Immediately notify National Response Center at 1-800-424-8802 for spills to water.

3. 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 Northwest Region or Southwest Region Spill Response Office, depending on the location of the buried container, at the numbers provided in condition F.2.e.

G. Appeal Process:

You have a right to appeal this Order. To appeal this you must:

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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
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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 98504-7600

For additional information visit the Environmental Hearings Office Website:
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To find laws and agency rules visit the Washington State Legislature Website:
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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 19th day of Feb, 2009 at Olympia, Washington.



Brenden McFarland, Section Supervisor
Shorelands & Environmental Assistance

Water Quality Certification Order # 6450 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 the SR 167 8th Street to 277th Street HOT Lane transportation project in Pierce and King County, WA. I further state that I have read and understand the relevant conditions of Washington Department of Ecology **Water Quality Certification Order# 6450** 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)

SR 167 8th Street East to 277th Street South, Southbound HOT Lanes
Water Quality Certification Order # 6450
Corps Reference # NWS-2008-1276-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 project including:
 - a) Project Location.
 - b) Month and year construction of the development project started and ended.

Floodplain Storage Site C

- 8) Brief description of the **final** compensatory mitigation project with any changes from the approved plan made during construction. Include:
 - a) Directions to the site.
 - b) Who completed the compensatory mitigation project (name, address, and phone number).
 - c) Acreage and type(s) (re-establishment, rehabilitation, creation, enhancement, and preservation) of mitigation authorized to compensate for wetland impacts.
 - d) Important dates including:
 - i. Month and year the wetland impacts occurred.
 - ii. When work on Floodplain Storage Site C 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 compensatory mitigation site.
- 10) Any changes to the goals, objectives, and performance standards of the compensatory mitigation project.
- 11) List of any follow-up actions needed, with a schedule.

- 12) 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);
 - e) Location of habitat features;
 - f) Location of permanent photo stations.

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 taken from permanent photo stations. We recommend photo pans.
- 14) Copies of any records of deed notification or conservation easements.