



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY  
*PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000*  
*TTY 711 or 800-833-6388 (For the Speech or Hearing Impaired)*

March 31, 2005  
REGISTERED MAIL

Ben Brown  
Washington Department of Transportation  
Northwest Region  
P.O. Box 330310  
Seattle, WA 98133-9710

RE: Water Quality Certification Order # 1963 and Coastal Zone Management (CZM) Consistency Response for Corps Public Notice 200401089 issued for the transportation project SR 9, Widening: SR 522 to 212<sup>th</sup> entailing the widening of SR 9 between MP 0.00 to MP 1.87 to improve safety and reduce traffic congestion in Snohomish County, Washington

Dear Mr. Brown:

The public notice from the U.S. Army Corps of Engineers (Corps of Engineers) for proposed work in or near Little Bear Creek, Whistle Creek, Cutthroat Creek, Great Dane Creek, 230<sup>th</sup> Street Creek, 233<sup>rd</sup> Street Creek, and an un-named creek, tributaries to the Sammamish River, in Snohomish County has been reviewed. On behalf of the State of Washington, Ecology certifies that the work proposed in the application for Corps of Engineers permit, and Corps of Engineers public notice complies with 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 letter also serves as the State response to the Corps of Engineers.

Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the applicant's determination that this work is consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

This certification concurrence is subject to the conditions contained in the enclosed Order.



Department of Transportation, NWRO

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If you have any questions, please contact Penny Kelley, Federal Permit Manager, at (360) 407-7298. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



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

BM:pk  
Enclosure

cc: Kim Harper - Ecology  
Jerry Shervey - Ecology  
Kate Stenberg - Corps of Engineers  
Jim Fraser - Department of Fish & Wildlife  
Pat Klavas - Department of Fish & Wildlife  
Liz Kriewald - Department of Transportation  
Dan Hagglund - Department of Transportation  
Jason Smith - Department of Transportation  
Penny Keys - Ecology HQ (tracking)

<b>IN THE MATTER OF GRANTING</b>	)	<b>Docket # 1963</b>
<b>A WATER QUALITY</b>	)	Corps # 200401089
<b>CERTIFICATION TO</b>	)	SR 9 Road Widening; 522 to 212th
Washington Department of Transportation	)	widening SR 9 between MP 0.00 and MP 1.87
in accordance with 33 U.S.C. 1341	)	replace culverts at 5 stream crossings
FWPCA § 401, RCW 90.48.260	)	and replace one driveway bridge
RCW 90.48.120 and WAC 173-201A	)	

TO: Department of Transportation  
 Attn: Ben Brown  
 P.O. Box 330310  
 Seattle, WA 98133-9710

On August 30, 2004, a request for water quality certification from the State of Washington was submitted for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401). The request for certification was made available for public review and comment through the Corps of Engineers' Public Notice No. 200401089.

The proposed project entails widening SR 9 from MP 0.00 to MP 1.87 with the addition of two new through lanes, one in each direction. To accommodate the new road width, three different road intersections on SR 9 will be widened and culverts will be replaced at 5 different stream crossings under SR 9. One driveway bridge will also be replaced. The road widening will require placement of fill in wetlands adjacent to the roadway resulting in 1.56 acres of wetland impact. Replacement of the 5 culverts will require work within the ordinary high water mark of Whistle Creek, Cutthroat Creek, Great Dane Creek, 230<sup>th</sup> Street Creek, 233<sup>rd</sup> Street Creek, and an un-named creek. The replacement of the driveway bridge will require work within the Ordinary High Water mark of Little Bear Creek to remove footings from the old driveway bridge. The proposed project is located adjacent to or crosses Little Bear Creek, Whistle Creek, Cutthroat Creek, Great Dane Creek, 230<sup>th</sup> Street Creek, 233<sup>rd</sup> Street Creek, and an un-named creek, tributaries to the Sammamish River in Section 22, 23, 26, 27, 34, 35, Township 27 North, Range 5 East, Snohomish County. As mitigation to the placement of fill in wetlands, the Department of Transportation is proposing to provide compensatory mitigation through creation of 1.87 acres of wetland. Impacts to streams will be mitigated through riparian buffer enhancement of 0.66 acres on Howell creek.

For purposes of this Order, the term "Applicant" shall mean the Washington State Department of Transportation (WSDOT) and its agents, assigns, and contractors.

**AUTHORITIES:**

In exercising authority under 33 U.S.C. 1341, RCW 90.48.120 and RCW 90.48.260, Ecology has investigated 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. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 302, 303, 306, and 307);
2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; 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:**

In view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.120, 90.48.260 RCW and Chapter 173-201A WAC, water quality certification is granted to the WSDOT Northwest Region subject to the following conditions:

**A. Water Quality Standard Conditions:**

1. These reaches of Whistle Creek, Cutthroat Creek, Great Dane Creek, 230<sup>th</sup> Street Creek, 233<sup>rd</sup> Street Creek, and an un-named creek drain to Little Bear Creek which is a tributary to the Sammamish River are all Class AA waters of the state. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (173-201A WAC) or sediment quality standards (173-204 WAC). Water quality criteria contained in 173-201A-030(1) WAC and 173-201A-040 WAC shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in 173-201A-110(3). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
2. This reach of Little Bear Creek has been identified on the current 303(d) list as exceeding state water quality standards for fecal coliform. This proposed project shall not result in further exceedances of this standard.

**B. TIMING:**

1. This Order is valid until all compliance requirements in this document have been met.
2. The Applicant shall reapply with an updated application if the information contained in the Corps of Engineers Public Notice and JARPA submitted on August 30, 2004 is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the public notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.

**C. Notification Conditions:**

1. Notification shall be made to Ecology's Federal Permit Manager (Penny Kelley at 360/ 407-7298, Fax 360/ 407-6904, Email [pkel461@ecy.wa.gov](mailto:pkel461@ecy.wa.gov) or mail P.O. Box 47600, Olympia, WA 98504-7600) for the following activities.
  - at least 10 days prior to the pre-construction meeting,
  - at least 7 days prior to the onset of any work on site,
  - at least 7 days prior to the onset of any work at the Whistle Creek mitigation site,
  - at least 7 days prior to the onset of any work at the Howell Creek mitigation site,

- at least 7 days prior to the onset of bridge footing removal
- immediately following a violation of the state water quality standards or condition of this order.

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

2. The Applicant shall ensure that all appropriate Project Engineer(s) and the Contractors at the project site and/or mitigation sites have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide to Ecology a signed statement (see Attachment A) 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 no less than 7 days before construction begins at the project or mitigation sites.

**D. Reporting Conditions:**

1. The applicant shall submit a bridge demolition plan 30 days prior to the beginning of footing removal activity.
2. The applicant shall submit a Temporary Erosion and Sediment Control (TESC) Plan 30 days prior to beginning construction for review. These plans shall include the following information:
  - a. TESC Plan
    - Name and phone number of person responsible for implementing plan;
    - best management practices (BMP's) anticipated to be implemented;
    - frequency of BMP inspections;
    - and contingency plan in the event of adverse weather condition or other foreseeable undesirable conditions.

**E. Construction Conditions:**

1. The project shall be clearly marked/staked prior to construction. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Sensitive areas and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. Equipment shall enter and operate only within the marked clearing limits, corridors and stockpile areas.
2. The Applicant shall comply with the current Construction NPDES permit issued for this project
3. Work in or near the waterbody shall be done so as to minimize turbidity, erosion, and other water quality impacts.

4. Erosion control devices (e.g., filter fences, hay bales, etc.) suitable to prevent exceedance of state water quality standards shall be in place before starting project construction and shall be maintained throughout construction.
5. Periodic inspection and maintenance of all erosion control structures shall be conducted no less than every 7 days from the start of the project to site stabilization. Additional inspections shall be conducted prior to and after expected rainfall events to ensure erosion control measures are in working condition. Any damaged structures shall be immediately repaired. If it is determined at the inspection that additional measures are needed to control stormwater and erosion, they shall be implemented immediately.
6. Temporary impacts to wetlands, wetland buffers, and stream buffers shall be limited to the amount necessary for construction. These disturbed areas shall be adequately protected from erosion using mulch or equivalent for the duration of the project and within seven days of project completion. If erosion control seed mixes are used in these areas, they shall consist of native species unless otherwise approved by modifications to this Order. These disturbed areas are to be replanted with native vegetation within the first appropriate planting season after construction is completed.
7. A contingency plan shall be developed detailing actions to be made in the event of adverse weather conditions or other foreseeable undesirable conditions.
8. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters. All fueling areas shall be provided with adequate spill containment. Fueling equipment and vehicles within 50 feet of state waters and wetlands is not allowed.
9. 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.
10. All debris, excess excavated material or deleterious material resulting from construction shall be removed from the construction site, and properly disposed of so that it cannot enter waters of the state including wetlands.
11. Turbid water generated from construction activities, including turbid de-watering water, shall not be discharged directly to waters of the state, including wetlands. Turbid water shall be routed to an upland location to allow removal of fine sediment and other contaminants.
12. Clean de-watering water that has been tested and confirmed to meet water quality standards may be discharged directly to waters of the state. The discharge outfall method shall be designed and operated so as not to cause erosion or scour in the stream channel, banks, or vegetation

Culvert Replacement

13. Culvert work shall be conducted in the dry or in isolation from waters of the state.
14. Re-introduction of water to the channel will be done gradually and in stages so as to minimize the mobilization of sediments and fines into downstream waters.
15. Temporary sediment traps shall be cleaned out and the settled sediments removed from the stream channel before removing the stream diversion system and returning the flow of the surface waterbody to its natural channel. Settled sediments shall not be allowed to enter state surface waters due to water or runoff flows that may occur after construction is completed.
16. Fresh concrete or concrete by-products shall not enter state waters at any time during the project. All forms used for concrete shall be completely sealed to prevent the possibility of fresh concrete entering state waters.
17. When possible, all concrete shall be poured during dry weather and in a dry de-watered site. If this is not possible, the concrete process water shall not enter waters of the state. All concrete shall be completely cured prior to coming into contact with state waters. 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.
18. A separate contained area shall be designated for wash out of items used for concrete work including but not limited to delivery trucks, pumping equipment, and tools. No concrete wash water shall be discharged to surface waters.

Driveway Bridge Construction, Footing Removal & Retaining Wall Construction

19. If fresh concrete or concrete by products are utilized in construction of the driveway bridge and construction of retaining walls, the conditions for concrete and concrete contact water under Culvert Replacement shall apply.
20. Excavated bridge footing material shall be removed from the construction site, and properly disposed of so that it cannot enter waters of the state including wetlands.
21. Footing removal shall be conducted during low flows or, if possible, in the dry.
22. If footing removal cannot be performed in the dry, best management practices and containment methods shall be in place to minimize turbidity during in-water work.
23. All disturbed areas from footing removal activity shall be stabilized after the work has been completed to prevent erosion.

**F. Wetland & Stream Mitigation Conditions:**

1. Impacts to aquatic resources shall be mitigated as described in the Final Conceptual Wetland and Stream Mitigation Report (hereafter referred to as "mitigation plan"), prepared by the Applicant, dated February 8, 2005, and approved by Ecology on February 14, 2005.
2. Any changes to the mitigation plan must be approved in writing by Ecology.
3. An irrigation plan for both the Howell Creek and Whistle Creek mitigation sites shall be sent to Ecology's Federal Permit Manager at least 30 days prior to beginning work at the mitigation sites.

Mitigation Construction

4. Compensatory mitigation construction and installation shall occur prior to, or concurrently with, project impacts to wetlands.
5. Appropriate and effective BMPs shall be installed adjacent to any surface water body on the mitigation sites prior to commencing earthwork so as to minimize erosion, turbidity, and other water quality impacts.
6. All excess excavated material from the mitigation sites shall be disposed of in an appropriate location outside of sensitive areas and their buffers and shall be stabilized or contained so as to prevent its entry into waters of the state.
7. No materials shall be stockpiled within the wetlands or streams on the mitigation sites.
8. Appropriate BMPs shall be implemented to minimize track-out during construction at the mitigation sites.
9. All earth areas that have been exposed or disturbed on the mitigation sites shall be stabilized to prevent erosion by using mulch or equivalent such as seeding with a suitable erosion control seed mix consisting of native grasses and forbs within seven (7) days of completion of grading.
10. Where the temporary construction access road lies within wetland, wetland buffer or stream buffer on the Whistle Creek mitigation site, those areas shall be fully replanted, following grading, with the species and densities specified in the mitigation plan, Appendix J. No access road, or clearing for an access route, shall be installed or maintained following completion of planting the site without written permission from Ecology.
11. Upon completion of grading on the mitigation sites, and prior to planting, the applicant shall provide written confirmation to Ecology that finished grades are consistent with the mitigation plan or other subsequent Ecology-approved modifications to grading plans.

12. An as-built report documenting the final design of the mitigation site shall be prepared when the mitigation site is completed. The report shall include the following:
  - final site topography;
  - photographs of the area taken from established permanent reference points;
  - a planting plan showing species, densities, sizes, and approximate locations of plants, as well as plant sources and the dates of planting;
  - habitat features (snags, large woody debris, etc) and their locations if any;
  - drawings in the report shall clearly identify the boundaries of the project;
  - locations of sampling and monitoring sites; and
  - any changes to the plan that occurred during construction.
13. The as-built report shall be sent to Ecology's Federal Permit Manager within 180 days of completing project construction and mitigation.

Mitigation Monitoring & Maintenance

14. All plantings at mitigation sites shall be watered and otherwise maintained as necessary to meet performance standards as stated in the mitigation plan.
15. When needed to meet the performance standards stated in the mitigation plan, dead or dying plants shall be replaced during the first available planting season with the same species or a native plant alternative that is appropriate for the location. The species, numbers and approximate locations of all replanted material shall be noted in the subsequent monitoring report.
16. The applicant's inability to meet a particular performance standard (termed "performance measures" and "success standards" in the mitigation plan) during monitoring years 1 through 7 does not necessarily mean that the wetland site is unsuccessful. The applicant shall present to Ecology the reasons for non-attainment. Ecology will determine whether remedial actions should be taken, additional wetland mitigation is needed, or the performance standard should be adjusted.
17. The Applicant shall comply with NPDES permit # WAG-993000 for Aquatic Noxious Weed Control if herbicides are selected to control invasive species at the mitigation sites. Methods used in areas within 20 feet of creeks shall be limited to localized application such as backpack sprayer or hand wicking. Application of herbicides shall occur only in dry weather.
18. Monitoring of the wetland mitigation sites will occur for a minimum of 10 years, with monitoring performed in years 1, 3, 5, 7 and 10. If, at monitoring year 10, all required performance standards have not been met, then Ecology may require additional monitoring and/or additional wetland mitigation area. Monitoring reports shall be sent to Ecology's Federal Permit Manager.
19. Any changes to the wetland monitoring plan requirements must be approved in writing by Ecology.

**G. Emergency/Contingency Measures:**

1. The applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials 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 shall comply with IL 4055.00 Environmental Compliance Assurance Procedure for Construction Projects and Activities effective March 10, 2003 and immediately take the following actions:
  - a) Cease operations
  - 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 and, 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 Northwest Regional Spill Response Office at 425-649-7000 and Department of Fish and Wildlife of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.
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.
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 the Ecology's Northwest Regional Spill Response Office at 425-649-7000.

**H. General Conditions:**

1. 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.
2. This Order does not exempt and is conditioned upon compliance with other statutes and codes administered by federal, state, and local agencies.
3. Ecology retains continuing jurisdiction to make modifications hereto through supplemental Order, if it appears necessary to further protect the public interest.
4. The Applicant shall construct and operate the project in a manner consistent with the project description contained in the JARPA submitted on August 30, 2004 and the Public Notice for certification, or as otherwise approved by Ecology.
5. The Applicant's representative shall be on-site, or on-call and readily accessible to the site, at all times while construction activities are occurring that may affect the quality of ground and surface waters of the state, including all periods of construction activities.
6. The Applicant's representative shall have adequate authority to stop work if conditions of this Order may be violated.
7. The Applicant's representative shall have adequate authority to ensure proper implementation of the Erosion and Sediment Control Plan, as well as immediate corrective actions necessary because of changing field conditions. If the Applicant's representative issues a directive necessary to implement a portion of the Pollution Control Plan or to prevent pollution to the water body, all personnel on site, including the construction contractor and the contractor's employees, shall immediately comply with this directive.
8. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology or WDFW personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
9. Copies of this Order and all related permits, approvals, and documents shall be kept on the project site and readily available for reference by the project managers, construction managers and foremen, other employees and contractors of the Applicant, and state agency personnel.
10. 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) per violation for each day of continuing noncompliance.

Water Quality Certification # 1963  
March 31, 2005  
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Any person aggrieved by Order #1963 may obtain review thereof by appeal. Pursuant to ch. 43.21B. RCW, a person can appeal this order to the Pollution Control Hearings Board within 30 days of the date of receipt of this Order. Any such appeal must be sent to the Washington Pollution Control Hearings Board, PO Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, Attn: Loree' Randall, PO Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated Mar 31 2005 at Olympia, Washington



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