



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)

August 19,2005

REGISTERED MAIL

Mr. Victor Woodward
Habitat Bank LLC
15600 NE 173rd Street
Woodinville, Washington 98072

RE: Water Quality Certification Order #2639 (Corps Public Notice 200300482) for the Snohomish Basin Mitigation Bank to restore and enhance wetlands, other aquatic resources, and riparian habitat on approximately 225 acres connecting to Pearson Eddy Slough, adjacent to Snoqualmie River, south of the City of Monroe, in Snohomish County, Washington.

Dear Mr. Woodward:

The public notice from the U.S. Army Corps of Engineers (May 23,2003) for proposed work in or near wetlands and an un-named ditch adjacent to the Snoqualmie River in Snohomish County has been reviewed. On behalf of the State of Washington, we certify that the work proposed in the application for Department of Army permit, and Corps 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.

If you have any questions, please contact Christina Merten at (360) 407-7186. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Brenden McFarland".

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



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.

CONDITIONS OF ORDER #2639 AND WATER QUALITY CERTIFICATION:

For purposes of this Order, the term "Applicant" shall mean the Habitat Bank LLC and its agents, assigns, and contractors.

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

A. No Impairment of Water Quality:

- A1. The project proposes to connect to an un-named ditch at the northern end of the property. This un-named ditch runs approximately 3,300 linear feet before connection with Pearson Eddy, which then connects with the Snoqualmie River north of the bank site. The Snoqualmie River is classified as Class A waters of the state. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A Washington Administrative Code (WAC)) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. Nothing in this Order 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.

The Snoqualmie River has been identified on the current 303(d) list as exceeding state water quality standards for temperature. This proposed project shall not result in further exceedances of water quality standards.

This project will be out of compliance with this Order if discharges from the project exceed limits established in 173-201A-030(1) WAC and/or 173-201A-040 WAC.

B. Project Mitigation:

- B1. Project shall be constructed and maintained through measures described in the following documents, except as modified by this Order:

- *Snohomish Basin Mitigation Bank, Mitigation Bank Instrument*

C. Stormwater Management:

- C1. Applicant shall comply with any stormwater provisions stated in the MBI.
- C2. During construction the Applicant shall comply with the current Construction Stormwater NPDES permit issued for this project.

D. Construction Stormwater and Erosion Control:

- D1. **Pre-Construction Meeting** – Before in-water construction begins for each phase, a pre-construction meeting shall be held on-site between the project engineer, all necessary construction contractors, and agency representatives including Corps of Engineers, Department of Ecology, and Washington Department of Fish and Wildlife. During this meeting, site conditions, permit specifications and the requirements of the water quality monitoring plan and the sediment and erosion control plans will be reviewed. This will assist all involved parties in understanding the intent, specifications, and requirements of the permits and plans. Notification of the meeting shall occur at least 5 working days in advance of the meeting.
- D2. Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (e.g., hay bales, detention areas, filter fences, etc.), shall be in place before starting clearing, filling, and grading work at the impact site.
- D3. Prior to clearing and grading in wetlands, the adjacent wetlands shall be protected from construction impacts. Construction fencing or flagging (using brightly colored tape at no less than twenty-five foot (25') intervals) of the existing wetlands and stream channels to be protected shall be completed prior to clearing. All project staff shall be trained to recognize construction fencing or flagging that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be filled.
- D4. During clearing and grading at the project site, Applicant shall take all necessary measures to minimize the alteration or disturbance of existing wetland and upland vegetation, unless otherwise approved by the MBI.
- D5. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- D6. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- D7. Applicant shall provide written notice to Ecology's SEA Program Mitigation Banking Staff at least 14 days prior to the start of placing fill in wetlands or other waters of the state, and within 14 days after completion of construction for each phase of the project.
- D8. All construction debris shall be properly disposed of on land so that it cannot enter the waterway or cause water quality degradation to state waters.
- D9. All excess excavated material shall be disposed of above the 100-year floodplain and shall be contained so as to prevent its re-entry into waters of the state.

- D10. Erosion control devices (e.g., filter fences, hay bales, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting project construction and shall be maintained throughout construction for each phase of the project.
- D11. 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 except as authorized by an NPDES or state waste discharge permit.
- D12. Clean Fill Criteria: Applicant shall ensure that fill placed for the proposed project does not contain toxic materials in toxic amounts.

E. Emergency/Contingency Measures:

- E1. Any in-water work that is out of compliance with the provisions of this Order, or any discharge of oil, fuel, or chemicals into state waters, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the operator shall immediately take the following actions:
- Cease operations
 - Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall be proper disposal of any spilled material and used cleanup materials.
 - Spills into state waters, spills onto land with a potential for entry into state waters, or other significant water quality impacts, shall be reported immediately to Ecology's Northwest Regional Spill Response Office at (425) 649-4259.
- E2. Construction monitoring: During and immediately after project construction, the applicant or contractor shall visually monitor the area for distressed or dying fish. If water quality exceedances are observed outside the dilution zone, in-work shall cease immediately and the applicant or the contractor shall contact Ecology's Northwest Regional Spill Response Office/
- Compliance with this condition does not relieve Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.
- E3. 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. No refueling of equipment shall occur over, or within 50 feet of creeks or wetlands.

F. General Conditions:

- F1. This Order does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state and local agencies.
- F2. 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.
- F3. Applicant will be out of compliance with this Order if the project is constructed and/or operated in a manner not consistent with the project description contained in the Public Notice for certification, or the MBI, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.
- F4. This Order will cease to be valid and the applicant must reapply with an updated application if five years elapse between the date of the issuance of this Order and the beginning of construction and/or discharge for which the federal license or permit being sought.
- F5. The Applicant shall reapply with an updated application if the information contained in the Public Notice 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.
- F6. Copies of this Order shall be kept on the job site during construction activities and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors.
- F7. To avoid violations or non-compliance with this Order, Applicant shall ensure that all appropriate supervisors and contractors at the project site and 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 from each supervisor 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. The Applicant shall also provide a similar signed statement to Ecology from each new supervisor or contractor hired or assigned after the project begins within 30 days of hiring.
- F8. Applicant shall provide access to the project site upon request by Ecology (or Other Agency) personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are met.

- F9 Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines 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 the public interest.
- F10. Liability: Any person who fails to comply with any provisions of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing non-compliance.

Appeal Process"

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to Chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology, within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 – 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

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

In addition, please send a copy of your appeal to:

Loree' Randall
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>

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 Chapter 43.21B RCW.

Dated Aug 17, 2005 at Lacey, Washington



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