



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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January 7, 2008

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Ben Brown
WSDOT
P.O. Box 330310
Mailstop 138
Seattle, WA 98133-9710

RE: Water Quality Certification Order 5317 for Corps Public Notice No. NWS-2007-29-SOD to widen SR 900 between Talus Drive and Newport Way in the City of Issaquah, King County, Washington

Dear Mr. Brown:

On January 11, 2007 WSDOT, submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed SR 900 widening project. The project will widen the road from two to five lanes between MP 20.09 and MP 21.08. The project proposes to permanently impact 0.75 acres of wetlands, and 0.39 acres of temporary impacts to wetlands. The project will mitigate for wetland impacts by creating 1.22 acres and enhancing 0.39 acre of primarily shrub-scrub wetland at the Lake Sammamish State Park (LSSP) site, in accordance with their Final Wetland and Stream Mitigation plan approved by Ecology. U.S. Army Corps of Engineers issued a public notice on May 1, 2007 for the proposed project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.



If you have any questions, please contact Katie Chamberlin at 425-649-7181. 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', with a stylized flourish at the end.

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

{kc}:{bm}
Enclosure

cc: MAP Team

e-cc: Penny Keys – HQ
Loree' Randall – HQ
Cynthia Walcker, WQ

IN THE MATTER OF GRANTING A)	ORDER # 5317
WATER QUALITY)	Corps Reference No. NWS-2007-29-SOD
CERTIFICATION TO)	Widen SR 900 between Talus Drive and
Washington State Department of)	Newport Way. The project will widen the road
Transportation)	from two to five lanes between with a two-way
in accordance with 33 U.S.C. 1341)	left turn lane and shoulders, adds a bike lane and
(FWPCA § 401), RCW 90.48.120, RCW)	a multi-use sidewalk located in King County,
90.48.260 and Chapter 173-201A WAC)	Washington.
)	

TO: Ben Brown
WSDOT
P.O. Box 330310
Mailstop 138
Seattle, WA 98133-9710

On January 11, 2007, Washington State Department of Transportation (WSDOT) submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on May 1, 2007.

The proposed project entails widening SR 900 between Talus Drive and Newport Way. The project will widen the road from two to five lanes between MP 20.09 and MP 21.08 with a two-way left turn lane and shoulders, adds a bike lane and a multi-use sidewalk. Tibbetts Creek Bridge will be widened, two culverts will be extended, and two culverts that are currently fish passage barriers will be replaced with longer fish passable culverts. The project will mitigate for wetland impacts in accordance with their Final Wetland and Stream Mitigation plan approved by Ecology.

AUTHORITIES

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §1311, 1312, 1313, 1316, and 1317 (FWPCA § 301, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions

1. For purposes of this Order, the term "Applicant" shall mean Washington State Department of Transportation (WSDOT), and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: Federal Project Coordinator – MAP Team, 3190 160th Avenue SE, Bellevue, WA 98008 or via e-mail (preferred) if possible to the Coordinator assigned to this project. Any submittals shall reference Order No. 5317 and Corps No. WS-2007-29-SOD.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on January 11, 2007 and supplemental information received. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA and supplemental information 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 Army Corps of Engineers does not issue an individual 404 permit.
6. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
7. 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.

8. 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.
9. 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.
10. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project.
11. 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.
12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation for each day of continuing noncompliance.

B. Notification Requirements

1. Notification shall be made to Ecology's Federal Project Coordinator in accordance with condition A.2 above for the following activities:
 - a. At least seven (7) days prior to the pre-construction meeting.
 - b. At least seven (7) days prior to the onset of any work on site.
 - c. At least seven (7) days prior to the onset of in-water work, including wetlands.
 - d. At least ten (10) days prior to the onset of work in the wetland mitigation site.
 - e. At least seven (7) days within project completion.
 - f. Immediately following a violation of water quality standards or any condition of this Order.

C. Water Quality and Monitoring

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) except as modified by this order. 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.

1. The Applicant shall submit a Water Quality Monitoring and Protection Plan (Plan) to the Federal Project Coordinator at least 20 days prior to beginning in-water activities, for review and approval. **In-water work is not authorized to begin until approval is received.**
 - a. The Plan shall include, at least, the following:
 - i. the name(s) and phone number(s) of the Pollution Control inspector and the person responsible for onsite monitoring and reporting.
 - ii. the BMP's and procedures to be used to protect water quality during specific proposed in-water activities.
 - iii. a water sampling plan for turbidity and pH, as appropriate.
 - iv. a map with numbered or named sampling locations associated with the in-water activities that require monitoring.
 - b. A background sample shall be collected at the beginning of each sample event.
 - c. Any changes and/or additions to the Plan must be approved in writing by Ecology.
2. Monitoring results shall be submitted monthly to the Ecology Federal Project Coordinator, per condition A.2.
3. Mitigation and/or additional monitoring may be required if water quality standards are not met.

D. Wetlands

1. The Applicant shall submit the Final Wetland and Stream Mitigation Report prior to beginning construction of the road project. The Wetland Mitigation portion of the Report must be approved by Ecology before wetland impacts occur.
2. The wetland mitigation shall be constructed as described in the Final Wetland and Stream Mitigation Report prepared by WSDOT and approved by Ecology. Any changes to wetland mitigation portion of the above referenced report, beyond minor modifications, must be approved in writing by Ecology.
3. The Applicant shall notify Ecology of any changes to the amount of wetland to be impacted and the Applicant shall not impact those wetlands until they receive written approval from Ecology.
4. 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 (e.g.

signed letter or memo from the surveyor, wetland biologist, or project engineer indicating how final elevations were confirmed and whether they are consistent with the plan).

5. The Applicant shall comply with the most current NPDES permits that apply to WSDOT for Aquatic Noxious Weed Control if herbicides are selected to control invasive species at the mitigation site. Methods used in areas within 20 feet of streams shall be limited to localized application such as backpack sprayer or hand wicking. Application of herbicides shall occur only in dry weather.
6. The Applicant shall submit a final as-built report for the wetland mitigation project, with maps, to Ecology within 60 days of completing construction, including planting. The as-built report documents conditions at year zero (0).
 - a. Provide Ecology with one electronic copy on compact disc or by email and one hard copy (see A.2.). Always prominently display the Corps Reference Number and the Ecology Order Number.
 - b. Include the information listed in Attachment B in the as-built report.
 - c. If the mitigation project is not completed within 13 months of the date of this Order submit a written status report on the mitigation construction. Continue to submit status reports every 12 months until construction (including planting) of the mitigation is complete and the final as-built report is submitted

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 project limits,* 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. If the project will be constructed in stages **a detailed description and drawings of the stages shall be sent to Ecology for review at least 20 days prior to placing HVF.
 - b. Condition E,2 shall apply to each stage.
 - c. All field staff shall be trained to: recognize HVF; understand its purpose; and properly install it in the appropriate locations.

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

** A stage is part of a project that has been separated into at least two distinct areas to be built during separate timeframes. This needs to go at the bottom of whatever page condition F2 is on.

- d. 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.
 - a. All clearing limit, stockpile site, staging area, and tree-preservation marking shall be 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. Work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.
6. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
7. All construction debris, excess sediment, and other waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
8. Turbid de-watering water associated with in-water work shall not be discharged directly to waters of the state. Turbid de-watering water shall be routed to an upland area for on-site settling or off-site disposal. The Applicant shall notify Ecology's Federal Project Coordinator before the use of off-site disposal methods.
9. 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.
10. The de-watering discharge outfall method shall be designed and operated so as not to cause erosion or scour in the stream channel, banks, or vegetation.
11. 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 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 set back area.
12. Equipment used during construction shall be serviced, fueled, and maintained on upland areas in order to prevent contamination of surface waters. All fueling areas shall be provided with adequate spill containment. Fueling of equipment and vehicles shall not occur within 50 feet of state waters and wetlands.

13. 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.
14. 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.
15. All culvert work shall be conducted in the dry or in isolation from stream flow by installing a bypass system, or by pumping the stream flow around the work area.
16. The stream diversion system shall be designed and operated so as to not cause erosion or scour in the stream channel or on the banks of the waterbody in which work is being conducted.
17. Fill associated with culvert installation shall be protected from erosion to the 100-year peak flow.
18. Disturbance of the streambed and banks shall be limited to that necessary to replace the culvert and to construct any required channel modification associated with it.
19. Affected streambed and bank areas outside the culvert shall be restored to pre-project or improved conditions following installation of the culvert.
20. All disturbed stream bank areas shall be protected from temporary erosion using BMPs until stabilized by vegetation.
21. Before water is diverted into the permanent new channel, all channel stabilization work and materials shall be in place.
22. Temporary sediment traps shall be cleaned out and the settled sediments removed from the stream channel before removing any stream diversion system and returning the flow of the stream to its natural channel. Settled sediments shall not be allowed to enter waters of the state, including wetlands.
23. 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.
24. Upon completion of the project, all materials used in the temporary bypass, or other method of work area isolation, shall be removed from the site and placed in an area approved by the appropriate regulatory authority.

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 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. 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 projects 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 a 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 Regional Spill Response Office at 425-649-7000 of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.
 - f. Immediately notify the National Response Center at 1-800-424-8802 for spills to water.
 - g. Notify Ecology's Federal Project Coordinator within 24 hours of a spill event described in condition G,2,d.
 - h. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

3. 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 Regional Spill Response Office at 425-649-7000.

H. Appeal Process:

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

- File your appeal with the Pollution Control Hearing 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 Hearing 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 packet to:		
Kerry Carroll Department of Ecology P.O. Box 47600 Olympia, WA 98503-7600		

For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>
To find laws and agency rules: Washington State Legislator Website: <http://www1.leg.wa.gov/CodeReviser>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated Jan 7, 2008 at Lacey, Washington.



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

ATTACHMENT A

**Washington State Department of Transportation
Water Quality Certification Order #5317**

**Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #5317 Section 401 Water Quality Certification for the SR 900 Talus Drive to Newport Way Widening Project. I have also read and understand all permits, plans, documents, and approvals associated with the SR 900 Talus Drive to Newport Way Widening Project referenced in this order.

Signature

Date

Title

Company