



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Region Office
PO Box 330316, Shoreline, WA 98133-9716 • 206-594-0000

May 19, 2022

Eli Heinz
395 East Hemmi Road
Lynden, WA 98264

Re: **Administrative Order No. 21155 to permanently fill/impact approximately 0.41 acres of wetlands, which are waters of the state, to construct the East Hemmi Road project in Whatcom County, Washington**

Dear Eli Heinz:

The Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application (JARPA) on December 11, 2020 requesting authorization for proposed work in wetlands, which are waters of the state. Ecology has determined that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Chapter 90.48 RCW and other pertinent requirements of state law.

This approval is subject to the conditions contained in the enclosed Order. **You must familiarize yourself with and abide by the conditions in the Order, including all notification requirements.** If you have any questions, please contact Chris Luerkens at (360)-410-4807 or chris.luerkens@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Joe Burcar, Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

Provided via electronic mail to: eli.heinz@gmail.com

Enclosure (1)

ec: Randel Perry, U.S. Army Corps of Engineers
Molly Porter, Northwest Ecological Services
Jon-Paul Shannahan, Whatcom County
ECYREFEDPERMITS@ECY.WA.GOV

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF ISSUING AN) ORDER No. 21155
ADMINISTRATIVE ORDER TO) NWS-2020-1163
Eli Heinz) East Hemmi Road, wetlands located in
pursuant to RCW 90.48.120 and WAC 173-201A) Whatcom County, Washington.

TO: Eli Heinz
395 East Hemmi Road
Lynden, WA 98264

This is an Administrative Order requiring Eli Heinz to comply with Chapter 90.48 RCW and the rules and regulations of the Department of Ecology (Ecology) by taking certain actions which are described below. RCW 90.48.120(2) authorizes Ecology to issue Administrative Orders requiring compliance whenever it determines that a person has violated or creates a substantial potential to violate any provision of Chapter 90.48 RCW.

On December 11, 2020, Ecology received a request to impact approximately 0.41 acres of wetlands, which are waters of the state, to construct the East Hemmi Road project in Whatcom County. The project is located south of the intersection of East Hemmi Road and Chasteen Road, Section 19 & 20, Township 38N, Range 03E, Whatcom County, WRIA 1 (Nooksack).

This Administrative Order (Order) authorizes approximately 0.41 acres of Category II wetland impacts at the project location. Onsite mitigation for this proposal will consist of approximately 4.86 acres of wetland enhancement, 1.05 acres of wetland enhancement within the required perimeter buffer, and 0.91 acres of wetland buffer enhancement for a total area of mitigation of 6.82 acres and all other actions as proposed in the *Impact Assessment & Mitigation Report*, Northwest Ecological Services, dated August 2020, and as revised in the *Memorandum*, Northwest Ecological Services, dated October 28, 2021. The mitigation will occur onsite, over three adjacent parcels (parcels 390320 025420, 390320 012486, and 390319 485435).

For purposes of this Order, the term “Applicant” shall mean Eli Heinz and its agents, assigns, and contractors.

In view of the foregoing and in accordance with RCW 90.48.120(2):

IT IS ORDERED that the Applicant shall comply with the following:

A. General Conditions:

1. The Applicant shall construct and operate the project in a manner consistent with the project description contained in the JARPA received by Ecology on February 11, 2021 or as modified by this Order or otherwise approved by Ecology.

2. For purposes of this Order, all submittals required by its conditions shall be sent to fednotification@ecy.wa.gov and a cc to chris.luerkens@ecy.wa.gov. Any submittals shall reference Order No. 21155.
3. The Applicant shall provide access to the project site and mitigation site upon request by Ecology.
4. 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 forepersons, and state and local government inspectors.
5. 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.
6. 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.

B. Notification Requirements:

1. The Applicant shall provide written notification to Ecology in accordance with condition A.2 above for the following activities:
 - a. Immediately following a violation of the state water quality standards or when the project is out of compliance with any condition of this Order
 - b. At least seven (7) days prior to conducting work activities in wetlands
 - c. Within seven (7) days after completing work at the wetland mitigation site.

C. Wetland Mitigation Conditions:

1. The Applicant shall mitigate wetland impacts as described in the *Impact Assessment & Mitigation Report, East Hemmi Road*, Northwest Ecological Services, dated August 2020, and as revised in the *Memorandum, Mitigation Addendum for East Hemmi Road*, Northwest Ecological Services, dated October 28, 2021 (hereafter called the "Mitigation Plan"), or as modified by this Order or revised and approved by Ecology.

2. The Applicant shall submit any changes to the Mitigation Plan in writing to Ecology (see A.2) for review and approval before implementing the changes.
3. The Applicant shall have a qualified wetland professional at the wetland mitigation site to supervise during construction and planting.

Implementation

4. Unless otherwise approved by Ecology in writing, the Applicant shall begin the compensatory mitigation project before, or concurrently with impacting wetlands, or Ecology may require additional compensation to account for additional temporal loss of wetland functions.
5. If the mitigation site(s) cannot be completed within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of:

- a. The work activities in wetlands at *East Hemmi Road* project.
- b. Mitigation area.

With the:

- c. Reason for the delay.
- d. Expected date of completion.

The Applicant shall submit an updated written notification every 12 months thereafter until the wetland impacts at *East Hemmi Road* project and the mitigation site are complete.

6. The Applicant shall ensure that all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers at the wetland mitigation site and above the 100-year floodplain.
7. The Applicant shall ensure that no material is stockpiled within existing wetlands or their buffers at the wetland mitigation site at any time, unless provided for in the Mitigation Plan.
8. The Applicant shall ensure that no construction debris is deposited within existing wetlands or their buffers at the wetland mitigation site at any time, unless provided for in the Mitigation Plan.
9. The Applicant shall not use polyacrylamide at the mitigation site.

10. The Applicant shall not use hay or straw on exposed or disturbed soil at the mitigation site, unless otherwise approved by Ecology.
11. Aquatic herbicides can be used or applied only by certified applicators or persons under the direct supervision of a certified applicator, and only for those uses covered by the certified applicator's license category.
 - a. Applicators are required to be permitted under Ecology's Noxious Weed Control Permit.
 - b. Applicators shall comply with all conditions of the Noxious Weed Control Permit.
12. If weed-barrier fabric is used on the site, the Applicant shall use only permeable, fully biodegradable, non-toxic weed-barrier fabric for entire-site and/or individual plant weed control, unless otherwise approved by Ecology. If non-biodegradable plastic weed-barrier fabric is approved by Ecology, it shall be used only at the base of individual plants and shall be removed before it starts to break down, before it interferes with plant growth, or before the end of the monitoring period, whichever comes first.
13. If seeding is used as a best management practice for temporary erosion control, it must be a seed mix consisting of native, annual, non-invasive plant species, unless otherwise approved by Ecology.
14. The Applicant shall not use solid or mesh plant protector tubes at the mitigation site(s) unless otherwise provided for in the Mitigation Plan.
15. The Applicant shall place permanent signs at the mitigation area's boundaries per the Mitigation Plan.
16. Split rail fencing will be installed and maintained along the perimeter of the mitigation site as shown on Figure 6 of the Mitigation Addendum, dated October 28, 2021.
17. After completing construction and planting of the mitigation sites(s), the Applicant shall submit to Ecology (see A.2) an as-built report, including plan sheets, documenting site conditions at Year Zero. The as-built report must:
 - a. Be submitted within 90 days of completing construction and planting.
 - b. Include the information listed in Attachment A (Information Required for As-built Reports).

- c. Include documentation of the recorded legal mechanism required in Condition C.18.
18. The Applicant shall follow the steps below to record a legal site protection mechanism consistent with the requirements of the Whatcom County Critical Areas Regulations for the East Hemmi Road mitigation site:
 - a. Request a template from Ecology or use an appropriate alternative to develop a draft site protection mechanism.
 - b. Send the draft site protection mechanism to Ecology for review and approval prior to recording.
 - c. Record the Ecology-approved site protection mechanism with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.
 - d. Record the site protection mechanism with a figure that corresponds with the legal description showing the area that is being protected, a copy of this Order, and a site map showing the location of wetlands and their buffers that are being protected.
 - e. Send a copy of the recorded site protection mechanism to Ecology with the As-Built Report (see C.17), unless otherwise approved by Ecology.

Monitoring and Maintenance

19. The Applicant shall water and maintain all mitigation site plantings so as to meet the Mitigation Plan's performance standards. If an irrigation system is installed, it shall be removed by the end of year three unless permission is received in writing from Ecology to allow the system to remain for a longer period.
20. The Applicant shall monitor the mitigation site for a minimum of 10 years. The Applicant shall use the monitoring methods described on pages 11-14 of the Mitigation Plan.
21. The Applicant shall submit to Ecology (see A.2) monitoring reports documenting mitigation site conditions for years *1, 2, 3, 5, 7, and 10*. The monitoring reports must:
 - a. Be submitted by December 31 of each monitoring year.
 - b. Include the information listed in Attachment B (Information Required for Monitoring Reports).

22. The Applicant shall implement the Mitigation Plan's contingency measures if the Mitigation Plan's goals, objectives, or performance standards are not being met.
23. Prior to implementing contingency measures not specified in the Mitigation Plan, the Applicant shall consult with and obtain written approval from Ecology for the contingency measures.
24. When necessary to meet the performance standards, the Applicant shall replace dead or dying plants with the same species, or an appropriate native plant alternative, during the current or upcoming planting season and note species, numbers, and approximate locations of all replacement plants in the subsequent monitoring report.
25. If the Applicant has not met all conditions, including performance standards, for the mitigation site at the end of the monitoring period, Ecology may require additional monitoring, additional mitigation, or both.
26. The Applicant's obligation to compensate for wetland impacts under Condition C.1 is not met until the applicant has received written notice from Ecology that the obligation is met.

D. Timing

1. This Order will expire when all its conditions have been met and upon receipt of a mitigation closeout letter from Ecology.

Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

Your right to appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do all of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Address and location information.

Filing an appeal with the PCHB:

Mailing Address:

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

Street Address:

Pollution Control Hearings Board
1111 Israel RD SW
STE 301
Tumwater, WA 98501

Serving a copy of the appeal on Ecology:

Mailing Address:

Department of Ecology
Attn: Appeals Processing Desk
PO Box 47608
Olympia, WA 98504-7608

Street Address:

Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

Contact Information

Please direct all questions about this Order to:

Chris Luerkens
Department of Ecology
Bellingham Field Office
913 Squalicum Way, Suite 101
(360) 410-4807
Chris.luerkens@ecy.wa.gov

More Information

- **Pollution Control Hearings Board Website**
<http://www.eluho.wa.gov/Board/PCHB>
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Chapter 90.48 RCW – Water Pollution Control**
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173.204 WAC – Sediment Management Standards**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>

- **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>
- **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

DATED May 19, 2022 at Shoreline, Washington.



Joe Burcar, Section Manager
Shorelands and Environmental Assistance Program
Northwest Regional Office
Washington State Department of Ecology

Attachment A
Information Required for As-built Reports

East Hemmi Road

Ecology Order # 21155

And

Corps Reference # NWS-2020-1163

Ecology requires the following information for as-built reports submitted under this Order. Ecology will accept additional information that may be required by other agencies.

Background Information

1. Project name.
2. Ecology Order number and the Corps reference number.
3. Name and contact information of the person preparing the as-built report. Also, if different from the person preparing the report, include the names of:
 - a) The applicant
 - b) The landowner
 - c) Wetland professional on site during construction of the mitigation site(s).
4. Date the report was produced.

Mitigation Project Information

5. Brief description of the **final** mitigation project with any changes from the approved plan made during construction. Include:
 - a) **Actual** acreage of Cowardin classes and mitigation type(s) (re-establishment, rehabilitation, creation, enhancement, preservation, upland, buffers).
 - b) Important dates, including:
 - i. Start of project construction.
 - ii. When work on the mitigation site began and ended.
 - iii. When different activities such as grading, removal of invasive plants, installing plants, and installing habitat features began and ended.
6. Description of any problems encountered and solutions implemented (with reasons for changes) during construction of the mitigation site(s).
7. List of any follow-up actions needed, with a schedule.

8. Vicinity map showing the geographic location of the site(s) with landmarks.
9. Mitigation site map(s), 8-1/2" x 11" or larger, showing the following:
 - a) Boundary of the site(s).
 - b) Topography (with a description of how elevations were determined).
 - c) Installed planting scheme (quantities, densities, sizes, and approximate locations of plants, as well as the source(s) of plant material).
 - d) Location of habitat features.
 - e) Location of permanent photo stations and any other photos taken.

Include the month and year when each map was produced or revised. The site map(s) should reflect on-the-ground conditions after the site work is completed.

10. Photographs taken at permanent photo stations and other photographs, as needed. Photos must be dated and clearly indicate the direction from which each photo was taken. Photo pans are recommended.
11. A copy of any deed notifications, conservation easements, or other approved site protection mechanism.

Attachment B
Information Required for Monitoring Reports

East Hemmi Road

Ecology Order # 21155

And

Corps Reference # NWS-2020-1163

Ecology requires the following information for monitoring reports submitted under this Order. Ecology will accept additional information that may be required by other agencies.

Background Information

1. Project name.
2. Ecology Order number and the Corps reference number.
3. Name and contact information of the person preparing the monitoring report. Also, if different from the person preparing the report, include the names of:
 - a) The applicant
 - b) The landowner
 - c) The party responsible for the monitoring activities.
4. Dates the monitoring data were collected.
5. Date the report was produced.

Mitigation Project Information

6. Brief description of the mitigation project, including acreage of Cowardin classes and mitigation type(s) (re-establishment, rehabilitation, creation, enhancement, preservation, upland, buffers).
7. Description of the monitoring approach and methods. For each performance standard being measured provide the following information:
 - a) Description of the sampling technique (e.g., monitoring point for soil or hydrology, line or point intercept method, ocular estimates in individually placed plots). If you are using a standardized technique, provide a reference for that method.
 - b) Size and shape of plots or transects.

- c) Number of sampling locations and how you determined the number of sampling locations to use.
 - d) Percent of the mitigation area being sampled.
 - e) Locations of sampling (provide a map showing the locations), how you determined where to place the sampling locations (e.g., simple random sample), and whether they are permanent or temporary.
 - f) Schedule for sampling (how often and when).
 - g) Description of how the data was evaluated and analyzed.
8. Summary table(s) comparing performance standards with monitoring results and whether each standard has been met.
 9. Discussion of how the monitoring data were used to determine whether the site(s) is meeting performance standards.
 10. Goals and objectives and a discussion of whether the project is progressing toward achieving them.
 11. Summary, including dates, of management actions implemented at the site(s), for example, maintenance and corrective actions.
 12. Summary of any difficulties or significant events that occurred on the site that may affect the success of the project.
 13. Specific recommendations for additional maintenance or corrective actions with a timetable.
 14. Photographs taken at permanent photo stations and other photographs, as needed. Photos must be dated and clearly indicate the direction the camera is facing. Photo pans are recommended.
 15. Vicinity map showing the geographic location of the site(s) with landmarks.
 16. Mitigation site map(s), 8-1/2" x 11" or larger, showing the following:
 - a) Boundary of the site(s).
 - b) Location of permanent photo stations and any other photos taken.
 - c) Data sampling locations, such as points, plots, or transects.
 - d) Approximate locations of any replanted vegetation.
 - e) Changes to site conditions since the last report, such as areas of regrading, a shift in the location of Cowardin classes or habitat features, or a change in water regime.

Include the month and year when each map was produced or revised. The site map(s) should reflect on-the-ground conditions during the most recent monitoring year.