



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Region Office

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

August 20, 2024

William (Boo) J. Maris
PO Box 1419
Bellingham, WA 98227

Re: Administrative Order **No. 23050** to permanently fill/impact 0.0545 acres of non-federally regulated wetlands, which are waters of the state, to construct 4302 Tull Road Project, in Whatcom County, Washington

Dear William (Boo) J. Maris:

The Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application (JARPA) on March 6, 2024, requesting authorization for proposed work in non-federally regulated 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 applicable 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. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

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

Enclosure (2)

By certified mail: 9171 9690 0935 0233 1418 29

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Sent via email to: boomaris@comcast.net

E-cc: Lydia Baldwin, U.S. Army Corps of Engineers
Ed Miller, Miller Environmental Services, LLC
Ryan Nelson, City of Bellingham
Chris Luerkens, Ecology
ECYREFEDPERMITS@ECY.WA.GOV

In The Matter of Issuing an Administrative Order
to William (Boo) J. Maris
pursuant to RCW 90.48.120 and WAC 173-201A

William (Boo) J. Maris
PO Box 1419
Bellingham, WA 98227

Order No.	23050
Corps Reference No.	NWS-2024-138
Site Location	4302 Tull Rd Project, located within wetlands, Bellingham, Whatcom County, Washington.

This is an Administrative Order requiring William (Boo) J. Maris 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.

The U.S. Army Corps of Engineers (Corps) issued a jurisdictional determination on March 6, 2024, concluding that Wetland A and B are not waters of the U.S. On March 6, 2024, Ecology received a request to impact approximately 0.0545 acres of non-federally regulated wetlands and indirectly impact approximately 0.128 acre of non-federally regulated wetlands, which are waters of the state, to construct the 4302 Tull Rd Project in Whatcom County. The project is located at 4302 Tull Road, Section 7, Township 38 N, Range, 03 E, WRIA 1 Nooksack.

This Administrative Order authorizes direct impact 0.0545 acres and indirect impacts to 0.128 acres of Category III and IV wetland impacts at the project location. Mitigation for these impacts include 0.168 acres of wetland creation, 0.24 acres of wetland enhancement, and 0.399 acres of buffer enhancement. Wetland mitigation will occur on the adjacent property directly east of the 4302 Tull Rd Project.

For purposes of this Order, the term "Project Proponent" shall mean William (Boo) J. Maris and their agents, assigns, and contractors.

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

IT IS ORDERED that the Project Proponent shall comply with the following:

A. General Conditions:

1. The Project Proponent shall construct and operate the project in a manner consistent with the project description contained in the JARPA received by Ecology on March 6, 2024 or as 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 cc to chris.luerkens@ecy.wa.gov. Any submittals shall reference Order No. 23050.
3. The Project Proponent 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 Project Proponent 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.
7. To transfer this Order to a new owner or operator the Project Proponent shall:
 - a. Complete a Request for Transfer of Order with a specific transfer date of the Order's obligations, coverage, and liability and submit it to Ecology per condition A.2. Link to form:
<https://apps.ecology.wa.gov/publications/SummaryPages/ECY070695.html>;
 - b. Provide a copy of this Order to the new owner or operator; and
 - c. The transfer is not considered valid until the Project Proponent receives written notification from Ecology that the transfer has been approved.

8. The Project Proponent is responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, local or tribal authorities.

B. Notification Requirements:

1. The Project Proponent shall provide written notification to Ecology in accordance with condition A.2. 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.
2. If U.S. Army Corps of Engineers (Corps) determines the proposed project requires a Federal permit, the Project Proponent shall inform Ecology immediately in order to receive the appropriate authorization.

C. Wetland Mitigation Conditions:

1. The Project Proponent shall mitigate wetland impacts as described in the *REVISED CRITICAL AREAS REPORT AND MITIGATION PLAN: WETLANDS AND HABITAT CONSERVATION AREAS FOR 4302 TULL ROAD* prepared by *Miller Environmental Services, LLC*, and dated *January 4, 2024*, and *4302 TULL ROAD PROJECT MITIGATION PLAN ADDENDUM*, prepared by *Miller Environmental Services, LLC*, and dated *July 23, 2024* (collectively called the Mitigation Plan), or as modified by this Order or revised and approved by Ecology.
2. The Project Proponent shall provide a status report on the mitigation construction to Ecology 13 months from the date of permit issuance. Annual status reports on mitigation construction are required until mitigation construction is complete.
3. The Project Proponent shall have a wetland professional at the wetland mitigation site to supervise during construction and planting.
4. Unless otherwise approved by Ecology in writing, the Project Proponent shall begin the compensatory mitigation project before, or concurrent with, impacting wetlands or Ecology may require additional compensation to account for additional temporal loss of wetland functions.
5. The Project Proponent shall monitor the mitigation site for a minimum of 10 years. The Project Proponent shall use the monitoring methods described on pages 21-23 of the Mitigation Plan.

6. The Project Proponent shall follow the steps below to record a deed notification (see Attachment A: Wetland Notice for Deed Notification for an example) or other approved legal site protection mechanism for the *4302 Tull Rd Project*:
 - a. Send the draft site protection mechanism to Ecology for review prior to recording and make edits based on Ecology's comments.
 - b. Record, on the mitigation site property deed, a description of the mitigation area identified in the final mitigation plan and a site map from the final wetland mitigation plan showing the location of wetlands and their buffers.
 - c. Record these documents with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.
 - d. Submit proof of this recorded documentation to Ecology within 180 days of this Order, unless otherwise approved by Ecology.
7. The Project Proponent shall implement the Mitigation Plan's contingency measures if the Mitigation Plan's goals, objectives, or performance standards are not being met.
8. Prior to implementing contingency measures not specified in the Mitigation Plan, the Project Proponent shall consult with and obtain written approval from Ecology for the contingency measures.

D. Timing

1. This Order is valid until the Project Proponent meets all its requirements and the Project Proponent has received written notification from Ecology to that effect.

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. The appeal process is governed by RCW 43.21B and WAC 371-08. "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 notice of appeal and a copy of this Order with the PCHB (see filing information below). “Filing” means actual receipt by the PCHB during regular business hours as defined in WAC 371-08-305 and -335. “Notice of appeal” is defined in WAC 371-08-340.
- Serve a copy of your notice of appeal and this Order on the Department of Ecology by mail, in person, or by email (see addresses below).

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

Filing an appeal

Filing with the PCHB

For the most current information regarding filing with the PCHB, visit: <https://eluh.wa.gov/> or call: 360-664-9160.

Service on Ecology

Street Addresses:

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

Mailing Addresses:

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

E-Mail Address:

ecologyappeals@ecy.wa.gov

Contact information

Please direct all questions about this Order to:

Chris Luerkens
Department of Ecology
(360) 410-4807
chris.luerkens@ecy.wa.gov

More information

- **Pollution Control Hearings Board Website**
<https://elaho.wa.gov/>
- **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 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

Signature

Dated this 20 day of August, 2024 at the Department of Ecology, Shorelin, Washington.



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

Attachment A

**Wetland Notice for Deed Notification
(See Condition C.6)**

4302 Tull Rd Project
Ecology Administrative Order # 23050

Tax Parcel Number: _____
Legal Description: _____
Legal Owner: _____

NOTICE: This property contains wetlands as defined by Chapter 36.70A030(21) RCW, Chapter 90.58.030 (2)(h) RCW and WAC 173-201A-020. The property was the subject of an Ecology action under Chapter 90.48.260 RCW or Chapter 90.48.120(1) RCW.

Ecology Order #: _____, issued on _____, 20____
To (Responsible Party Name): _____
For (Project Name): _____

Restrictions on use or alteration of the wetlands may exist due to natural conditions of the property and resulting regulations. A site map indicating the location of wetlands and their buffers is attached hereto.

EXECUTED this _____ day of _____, 20 ____.

State of Washington)
County of _____)

I certify that I know or have satisfactory evidence that _____
signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

GIVEN under my hand an official seal this _____ day of _____, 20 ____.

NOTARY PUBLIC in and for the state of Washington,
residing at _____.
(Amended by Ord. 11200 § 50 (part), 1996)