



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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January 6, 2020

Snohomish County Public Works  
ATTN: Julie Highton, Senior Planner  
3000 Rockefeller AVE, Stop 607  
Everett WA 98201-4071

RE: Water Quality Certification Order No. 17964 for Corps Public Notice No. NWS-2019-108-WRD, Union Slough 10 Year Maintenance Dredging Program in Snohomish County, Washington

Dear Julie Highton:

On February 25, 2019, Snohomish County Public Works submitted a request for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the Union Slough 10 Year Maintenance Dredging Program in Snohomish County, Washington.

Over a 10 year period, Snohomish County Public Works is proposing to dredge up to 100,000 cubic yards of sediment that may accumulate in Union Slough due to breaching dikes to restore tidal marshland. The purpose of dredging is to maintain navigation in Union Slough. The material will be dredged using either a hydraulic dredge (for small amounts of less than 300 cubic yards) or a mechanical clamshell (volumes above 300 cubic yards). All removed material will be taken to the Port Gardner Open Water Disposal site, used for beach nourishment, or to an approved upland facility.

On behalf of the State of Washington, the Department of 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 Penny Kelley at 360-407-7298 or [penny.kelley@ecy.wa.gov](mailto:penny.kelley@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

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



Enclosure

by certified mail: 9489 0090 0027 6066 3562 24

E-cc: Andrew Shuckart, Corps of Engineers  
Alison O'Sullivan, Suquamish Tribe  
Matthew Baerwalde, Snoqualmie Tribe  
Jamie Bails, WDFW  
ECY RE FEDPERMITS  
Loree Randall, HQ, SEA

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER # 17964</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. NWS-2019-108-WRD</b>
<b>CERTIFICATION TO</b>	)	Conduct maintenance dredging on Union Slough
Snohomish County Public Works	)	between Buse Cut and Buse Timber Log Ramp
in accordance with 33 U.S.C. 1341	)	to maintain navigation in the slough. The project
(FWPCA § 401), RCW 90.48.120, RCW	)	is located within the City of Everett in
90.48.260 and Chapter 173-201A WAC	)	Snohomish County, Washington.

Snohomish County Public Works  
 Attn: Julie Highton, Senior Planner  
 3000 Rockefeller AVE, Stop 607  
 Everett WA 98201-4071

On February 25, 2019, the Department of Ecology (Ecology) received Snohomish County Public Works request for a Section 401 Water Quality Certification (WQC) for the Union Slough 10 year Maintenance Dredging Program. The U.S. Army Corps of Engineers (Corps) issued a joint public notice for the project on October 30, 2019.

As part of the Smith Island Restoration project, Snohomish County breached large portions of the Smith Island dike adjacent to Union Slough to re-establish historical tidal marshlands. The county may need to dredge sediment that could accumulate in Union Slough from breaching the dikes in order to maintain the navigation channel in the slough. The location for this work is a 9000' linear area starting at Buse Cut and ending at Buse Timber Log Ramp. The maintenance dredging will occur when sediment accumulates above an elevation -0.5 mean lower low water (MLLW) and will extend down to an existing depth -8.5 feet MLLW with an allowable 2 foot over dredge (-10.5 MLLW). The maintenance dredging would occur over a 10 year period with the total volume anticipated for removal at 100,000 cubic yards.

Depending on the amount of sediment being removed at any given dredging event, the applicant will use a hydraulic dredge (small volumes, ~300 cubic yards or less) or a mechanical clamshell (larger volumes, exceeding ~300 cubic yards). Dredged material will be placed on a barge and dewatered prior to disposal. If additional sampling and testing confirms the material can be disposed in open water, it will be taken to the Port Gardner open water site. The material may also be temporarily stockpiled at the north end of the project and used for beach nourishment. However, if the material is not suitable for open water disposal, it will be hauled by truck to an approved upland facility from the temporary stockpile location. Best management practices will be used to ensure any material temporarily stockpiled on site will not discharge back into Union Slough.

The project is located on Union Slough within the City of Everett in Snohomish County, Washington.

Section 3      T29N R5E  
 Section 4      T29N R5E  
 Section 9      T29N R5E  
 Section 10     T29N R5E  
 WRIA 7 - Snohomish



## **AUTHORITIES**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed 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, 302, 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 comply with 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 Snohomish County Public Works 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). Furthermore, nothing in this certification absolves Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments resulting from project construction or operations.

### **A. General Conditions**

1. In this Order, the term "Applicant" shall mean the Snohomish County Public Works and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to HQ Office, Attn: Federal Permit Manager, P.O. Box 47600, Olympia, WA 98504-7600 or via e-mail to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to [penny.kelley@ecy.wa.gov](mailto:penny.kelley@ecy.wa.gov). The submittals shall be

identified with Order #17964 and include the Applicant name, project name, project contact, and the contact phone number.

3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Permit Application (JARPA) received by Ecology on February 25, 2019.
4. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that might significantly and adversely affect water quality, other than those project changes required by this Order.
5. Within 30 days of receipt of any updated information, Ecology will determine if the revised project requires a new public notice and Water Quality Certification or if a modification to this Order is required.
6. This Order is not effective until the Corps of Engineers issues a permit for this project.
7. The Applicant shall send (per A.2.) a copy of the final Corps permit to Ecology's Federal Permit Manager within two weeks of receiving it.
8. The Applicant shall keep copies of this Order 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.
9. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, and/or necessary data collection, to ensure that conditions of this Order are being met.
10. 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.
11. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48) or the federal Clean Water Act, Ecology may issue an amendment to this Order to incorporate any such changes or amendments applicable to this project.
12. The Applicant shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work 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 signatory that s/he has read and understands the conditions of this Order and



the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins.

13. 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.
14. Failure of any person or entity to comply with the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.
15. Conditions in this Order apply to all planned phases of the construction and the mitigation for this project.

#### **B. Notification Requirements**

1. The following notification shall be made via phone or e-mail (e-mail is preferred) to Ecology's Federal Permit Manager via e-mail to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to [penny.kelley@ecy.wa.gov](mailto:penny.kelley@ecy.wa.gov). Notifications shall be identified with Order No.17964 and include the Applicants name, project name, project location, project contact and the contact's phone number.
  - a. Immediately following a violation of state water quality standards or when the project is out of compliance with any of this Orders conditions.
    1. In addition to the phone or e-mail notification, the Applicant shall 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.
  - b. At least ten (10) days prior to all pre-construction meetings for each dredging cycle.
  - c. At least ten (10) days prior to conducting initial in-water work activities for each in-water work window.
  - d. At least seven (7) days within project completion of each dredging cycle.
2. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction and mitigation are completed.

#### **C. Timing**

1. This Order is valid until the Applicant meets all its requirements and the applicant has received written notification from Ecology to that effect.
2. This Order will expire ten (10) years from the date of issuance of the Corps permit.

3. In-water work shall be conducted between July 1st and February 15<sup>th</sup> of any year, unless otherwise approved by Ecology.
4. Any project change that requires a new or revised Hydraulic Project Approval (HPA) from the Department of Fish and Wildlife should be sent to Ecology for review.

#### **D. Water Quality Monitoring & Criteria**

1. Union Slough is categorized as Salmonid Spawning, Rearing, and Migration and the criteria of the categorization apply as described in WAC 173-201A-210 (1), except as specifically modified by this Order.
2. The Applicant shall conduct water quality monitoring as described in the approved *Union Slough 10 year Maintenance Dredging Program Water Quality Monitoring Plan* (hereafter referred to as the WQMP) prepared by Anchor QEA, LLC dated August 2019.
3. The Applicant must provide, in writing, any changes or additions to the WQMP and obtain approval from Ecology's Federal Permit Manager prior to implementation of the changes or additions.
4. Monitoring results shall be submitted weekly to the Ecology Federal Permit Manager, per condition A.2.
5. Mitigation and/or additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.
6. Visible turbidity anywhere beyond the temporary area of mixing (point of compliance) from the activity shall be considered an exceedance of the standard.
7. If water quality exceedances for turbidity are observed outside the point of compliance, work shall cease immediately and the Applicant or the contractor shall assess the cause of the water quality problem and take immediate action to stop, contain, and correct the problem and prevent further water quality turbidity exceedances.

#### **E. Operations & Methods**

##### General Conditions

1. All construction debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
2. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.



3. All equipment being used below the ordinary high water mark shall utilize bio-degradable hydraulic fluid where practicable.

#### Equipment & Maintenance

4. 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 waters of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Permit Manager before placing the staging area in the setback area.
5. 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.
6. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
7. 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.
8. 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.
9. Barges shall not be allowed to ground-out during in-water dredging.
10. Barges shall be swept, as necessary, and kept free of material that could be blown into water.

#### Dredging

11. All dredging is to be done using a hydraulic dredge or a mechanical clamshell. **Use of any other type of dredge requires preapproval from Ecology.**
12. All dredged material will be taken to Port Gardner Open Water disposal site or taken to an approved upland facility. **Use of any other type of disposal method or location requires pre-approval by Ecology.**
13. Material taken to Port Gardner Open Water disposal site must be mechanically dredged and transported via bottom dump barge.
14. At least 30 days prior to starting the dredging activity for each dredging cycle, the Applicant shall submit a *Dredging and Disposal Workplan* to Ecology for review and approval, per A.2.



15. The *Dredging and Disposal Workplan* shall include the following:
  - a. General information including schedule, primary contact, and hours of operation
  - b. Dredged quantities and disposal location
  - c. Dredging procedures and sequence
  - d. Equipment list
  - e. A description of the BMPs to be used to filter dewatering material on the barges
  - f. A description of BMPs to be used at temporary stockpile location at the northern end of the project area.
16. A pre-dredge meeting is required to be convened prior to the start of dredging for each dredging cycle.
17. Dredging operations shall be conducted in a manner that minimizes the disturbance and siltation of adjacent waters and prevents the accidental discharge of petroleum products, chemicals or other toxic or deleterious substances into state waters.
18. Dredged material shall not be temporarily or permanently stockpiled below the OHWM.
19. Any material temporarily stockpiled within the project site prior to being taken to an approved upland facility shall be fully contained and not allowed to enter waters of the state.
20. Material shall not be temporarily stockpiled on the project site for longer than 6 months.
21. Vegetation shall not be cleared to create a temporary stockpile area.
22. All debris larger than two (2) feet in any dimension shall be removed from the dredged sediment prior to disposal at the open water site. Similar-sized debris floating in the dredging or disposal area shall be removed.
23. If dredged material is placed onto a barge and transported by tugboat to the open water disposal site, the barges shall have sidewalls to contain the material, and the barges shall not be overfilled to prevent barge overflow. Additional BMPs shall be implemented to allow filtering so as to prevent exceedence of water quality standards.
24. Prior to each dredging cycle, the Applicant shall contact the DMMP agencies to determine whether additional sediment testing is required. If additional testing is required, no dredging or disposal shall be conducted until the material has been tested and a suitability determination has been issued.

**F. Emergency/Contingency Measures**

1. The Applicant shall develop and implement a spill prevention and containment plan for this project.
2. The Applicant shall have adequate and appropriate spill cleanup material available on site at all times during construction.
3. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
4. 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.
5. Work causing distressed or dying fish, discharges of oil, fuel, or chemicals into state waters or onto land with a potential for entry into state waters, is prohibited. If such work, conditions, or discharges occur, the Applicant shall notify the Ecology Federal Permit Manager per condition B.1. and immediately take the following actions:
  - a. Cease operations at the location of the non-compliance.
  - 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 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.
  - d. Immediately notify Ecology's Regional Spill Response Office at 1-800-258-5990 and the Washington State Department of Fish & Wildlife with the nature and details of the problem, any actions taken to correct the problem, and any proposed changes in operation to prevent further problems.
  - e. Immediately notify the National Response Center at 1-800-424-8802, for actual spills to water only.
6. Notify Ecology's Regional Spill Response Office immediately if chemical containers (e.g. drums) are discovered on-site or any conditions present indicating disposal or burial of chemicals on-site that may impact surface water or ground water.



### YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing 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 both 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

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

### CONTACT INFORMATION

Please direct all questions about this Order to:

Department of Ecology, Headquarters  
PO Box 47600  
Olympia, WA 98504-7600  
360-407-7298  
[Penny.kelley@ecy.wa.gov](mailto:Penny.kelley@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>

**SIGNATURE**

Dated this 6 day of January 2020 at the Department of Ecology, Olympia, Washington



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

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

Union Slough 10 year Maintenance Dredging Program  
Snohomish County Public Works  
Water Quality Certification Order No. **17964**  
and  
Corps Reference No. **NWS-2019-108-WRD**

I, \_\_\_\_\_, state that I will be involved as an agent or contractor for Snohomish County Public Works in the site preparation and/or construction of the Union Slough 10 Year Maintenance Dredging located on Union Slough in Snohomish County, Washington. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order No. 17964 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Company