

EXECUTIVE ORDER 90-04

PROTECTION OF WETLANDS

WHEREAS, wetlands provide ecological as well as economic benefits to the state by protecting and preserving drinking water supplies; by providing a natural means of flood and storm damage protection; by serving as transition zones between dry land and water courses, thereby retarding soil erosion; by providing essential breeding, spawning, rearing, feeding, nesting, and wintering habitats for fish and wildlife; by providing special vegetation and vegetative communities; by serving important functions for surface and groundwater supplies of the state; and by providing outdoor training and educational resources; and

WHEREAS, as much as fifty percent of the state's original wetlands have been drained, dredged, filled, or otherwise altered and over ninety percent of the original saltwater wetlands in some urban estuaries of Puget Sound have been eliminated; and

WHEREAS, losses statewide are as much as two thousand acres annually; and

WHEREAS, loss of wetlands, harms the economic and ecological welfare of the state; and

WHEREAS, local governments are in the process of planning for growth and for the protection of critical areas, including wetlands; and

WHEREAS, wetlands are among the most fragile of natural resources and must be protected by state agencies in their stewardship of lands and waters subject to the public trust; and

WHEREAS, it is in the public interest to protect the functions and values of wetlands;

NOW, THEREFORE, I, Booth Gardner, Governor of the state of Washington, by virtue of the power vested in me, do hereby order:

Section 1. All state agencies shall rigorously enforce their existing authorities to assure wetlands protection;

Section 2. All state agencies shall exercise their substantive authority under the State Environmental Policy Act (SEPA), to the extent legally permissible, to require mitigation of wetlands impacts for all agency actions affecting wetlands. Such actions include, but are not limited to, rule development and any projects or actions requiring state licenses, permits, approvals, loans or grants. State agencies shall, when necessary, amend their SEPA policies to include wetlands protection components. The Department of Ecology, in its review of SEPA compliance documents, shall encourage and, to the extent legally permissible, require complete analyses of wetlands impacts, mitigation, and buffers;

Section 3. The Department of Ecology shall, to the extent legally permissible, exercise its authority under the Shoreline Management Act, to condition, deny, or appeal permits to assure wetlands protection. In addition, the Department of Ecology shall develop a model wetlands protection element for local governments to consider when amending shoreline master programs under the Shoreline Management Act;

Section 4.

(a) The Department of Ecology shall request the Division Engineer of the Army Corps of Engineers to assert discretionary authority and modify nationwide permit 26 to require individual permits or permit conditions for certain categories of activities, types of wetlands and specific geographical regions. Examples include natural heritage sites, wetlands associated with shorelines of statewide significance, and recorded locations of threatened and endangered species. In these instances, actions affecting wetlands will no longer receive automatic authorization;

(b) The Department of Ecology shall evaluate and recommend future actions to reduce impacts to wetlands under the Federal Clean Water Act, such as further modifications to nationwide permit 26. The Department of Ecology shall reevaluate section 401 certification of nationwide permits affecting wetlands at such time as these permits are revised by the Army Corps of Engineers or when the existing certification expires in 1992, whichever comes first;

(c) The Department of Ecology, to the extent authorized by law, shall condition or deny water quality certifications under section 401 of the Federal Clean Water Act to prevent the degradation of wetlands;

Section 5. The Department of Ecology, in its triennial review of water quality standards, shall revise the standards to incorporate provisions specifically designed to better protect wetlands;

Section 6. The Departments of Wildlife and Fisheries shall fully implement the authority granted under the Hydraulics Code and, to the extent legally permissible, condition or deny permits to protect fish life by assuring wetlands protection;

Section 7. The Puget Sound Water Quality Authority shall continue its efforts to ensure full implementation of the wetlands elements of the Puget Sound Plan. All state agencies within available resources, shall use their authorities to assist in implementing applicable portions of the Puget Sound Plan wetlands program;

Section 8. The Department of Agriculture shall develop a permit system for application of pesticides on or near wetlands by licensed applicators in order to assist in evaluating the type, amount, and impact of pesticides used in wetlands. The Department of Agriculture shall also develop a program to assess the amount of pesticides applied by non-licensed persons on or near wetland areas through required reporting of sales volume of pesticide products not requiring licensure for purchase;

Section 9. The Forest Practices Board, with assistance from the Department of Ecology, is encouraged to amend both the forest practices rules and the best management practices for forest practices to protect wetlands in a manner consistent with this executive order;

Section 10. The Department of Community Development shall adopt standards establishing wetlands protection criteria for administration and issuance of funds through its public works trust fund, community development block grant program, and housing trust fund; and the Department of Trade and Economic Development shall work with the Community Economic Revitalization Board (CERB) to develop and adopt wetlands protection criteria for administration and issuance of CERB loans and grants;

Section 11. The Department of Ecology shall give special consideration and allowance to those Centennial Clean Water Act grant proposals containing wetlands protection elements and shall condition any grant approvals to assure wetlands protection;

Section 12. All state agencies shall use the following definition of mitigation, in the following order of preference:

(1) Avoiding the impact altogether by not taking a certain action or part of an action;

- (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- (5) Compensating for the Impact by replacing, enhancing, or providing substitute resources or environments;
- (6) Monitoring the Impact and taking appropriate corrective measures;

Mitigation for individual actions may include a combination of the above measures;

Section 13. The Department of Ecology shall develop statewide policies and standards on wetlands rating systems, mitigation, buffers, restoration, and enhancement In consultation with other agencies and interested parties. These policies and standards shall be adopted to the extent legally permissible by all state agencies as part of their SEPA policies, and shall be applied where appropriate to all licenses, permits, approvals, grants and actions undertaken by state agencies;

Section 14. The Department of Ecology, In consultation with agencies and academic institutions with expertise, tribes, local governments, and other appropriate parties, shall coordinate wetlands inventory activities and develop inventory standards and strategies to standardize and maximize the efficiency and effectiveness of inventory efforts in the state;

Section 15. The Department of Ecology shall develop a wetlands impact assessment process in conjunction with the demonstration conservation plan required by RCW 90.54. The wetlands impact assessment process shall balance the public policies of wetlands protection and water use off efficiency as set out in RCW 90.03. The Department of Ecology shall consult with other interested and affected parties, in order to assist in decision making regarding water use efficiency improvements and wetlands protection;

Section 16. The Department of Ecology shall provide technical assistance to the Department of Community Development in the development of wetlands protection policies and standards for the implementation of grants programs and to guide the development of local government comprehensive plans and development regulations under the growth management bill passed by the 1990 legislature;

Section 17. The Department of Ecology shall provide educational and technical assistance, within available resources, for local government implementation. of the wetlands protection components of the Puget Sound Plan and wetlands protection components of the growth management bill passed by the 1990 legislature;

Section 18. All local governments in this state are requested and encouraged to make all of their actions consistent with the intent and goals of this executive order. The Department of Ecology, in consultation with local governments, shall develop a model local government wetlands protection ordinance, and shall initiate and administer a local grants program, as funding permits, for the development of local wetlands protection programs;

Section 19. All appropriate state agencies shall continue to develop and implement wetlands education and outreach activities and to inform public and private interests regarding the provisions of this order;

Section 20.

(a) There is hereby established an Interagency Wetlands Review Board (Board) which shall consist of the directors or designees of the Department of Ecology, the Department of Fisheries, the Department of Wildlife, the Department of Agriculture, the Puget Sound Water Quality Authority, and the Department of Community Development. The Department of Transportation and the Department of Natural Resources are invited to become members of the Board. The representative of the Department of Ecology shall serve as chair and shall provide staff support when needed;

(b) The Board is empowered to develop means to implement and monitor agency compliance with this executive order. The Board shall submit regular reports to the Governor on actions taken under this order;

(c) The Board is authorized to ask for assistance from any department, office, division or agency of this state to supply data, personnel, or assistance as necessary to implement the directives of this executive order;

Section 21. Nothing in this executive order shall apply to assistance provided for emergency work that is essential to save lives or protect property and public health and safety.

IN WITNESS WHEREOF, I have hereunto
set my hand and caused the seal of the State
of Washington to be affixed at Olympia
this 21st day of April A.D., Nineteen hundred and ninety.

By:

BOOTH GARDNER
Governor of Washington

BY THE GOVERNOR:
Secretary of State