



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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July 8, 2021

Washington Department of Transportation  
ATTN: Steve Fuchs  
P.O. Box 47440  
Olympia, WA 98504-7440

RE: Water Quality Certification Order No. 20165 for Corps Reference No. **NWS-2020-864-DOT**, SR 167/I-5 to SR 509 – New Expressway (Stage 1b), Pierce County, Washington

Dear Steve Fuchs:

The Washington Department of Transportation submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the SR 167/I-5 to SR 509 – New Expressway (Stage 1b) project in Pierce County, Washington.

The proposed project will construct a 2-mile section of road between SR 509 and I-5 and a new portion of SR 167 alignment between I-5 and 20<sup>th</sup> Street East. The project crosses Surprise Lake Tributary, Hylebos Creek, and small streams.

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the Joint Aquatic Resource Permit Application (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.

Please ensure that anyone doing work under this Order has read, is familiar with, and is able to follow all of the provisions within the attached Order.

If you have any questions about this decision, please contact Penny Kelley at 360-280-8856. The enclosed Order may be appealed by following the procedures described within the Order.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brenden", is written over a horizontal line.

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

Steve Fuchs

July 8, 2021

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e-cc: Sandi Manning, Corps of Engineers  
Char Naylor, Puyallup Tribe  
Elizabeth Bockstiegel  
Carol Serdar, Ecology  
Jesse Eakins, Ecology  
Dave Davies, WSDOT  
Daniel Babuca, WSDOT  
ECY RE FEDPERMITS

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER # 20165</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. NWS-2020-864-DOT</b>
<b>CERTIFICATION TO</b>	)	Construct a 2-mile section of road between SR
WA Department of Transportation	)	509 and I-5 and a new portion of SR 167
pursuant to 33 U.S.C. 1341 (FWPCA	)	alignment between I-5 and 20 <sup>th</sup> Street East. The
§ 401), RCW 90.48.120, RCW 90.48.260	)	project crosses Surprise Lake Tributary, Hylebos
and Chapter 173-201A WAC	)	Creek, and small streams in Pierce County, WA.

Washington Department of Transportation  
 Attn: Steve Fuchs  
 P.O. Box 47440  
 Olympia, WA 98504-7440

On September 10, 2020, the Environmental Protection Agency received a request from the Washington Department of Transportation (WSDOT) for a Section 401 Water Quality Certification (WQC) for the SR 167/I-5 to SR 509 – New Expressway (Stage 1b). The Environmental Protection Agency determined that the Washington Department of Ecology has jurisdiction to administer and implement the Clean Water Act (CWA) for delegated or authorized programs over non-tribal fee lands and non-trust lands within the Puyallup Tribe of Indians 1873 Survey Boundary. Therefore, the EPA transferred the CWA Section 401 water quality certification request for the SR 167 Stage 1b Project to Ecology for review and processing. The U.S. Army Corps of Engineers (Corps) issued a joint public notice for the project on October 6, 2020.

The proposed SR 167/I-5 to SR 509 – New Expressway (Stage 1b) project entails constructing the second of three stages of the SR 167 Completion Project's Phase 1 Improvements (6-mile corridor). The Stage 1b project includes building a new SR 509, 2-mile long Spur alignment between SR 509 and I-5 and a new portion of SR 167 alignment between I-5 and 20<sup>th</sup> Street East. The project also includes construction of the Riparian Restoration Program (RRP) which is part of the proposed aquatic mitigation in the Hylebos Creek and Surprise Lake Tributary area for Stage 1b work and for future projects proposed by WSDOT. The stage 1a project (SR 167/70<sup>th</sup> Avenue E Vicinity Bridge Replacement) is currently under construction.

The new, 2-mile long spur and the new portion of SR 167 alignment requires multiple local and state route improvements including a new roundabout, interchange at 54<sup>th</sup> Avenue East, new diverging diamond interchange at I-5 and realignment and widening on the SR 509, North Frontage Road and South Frontage Road (of SR 509) between approximately Taylor Way and Alexander Avenue East, and Port of Tacoma Road. Two toll points will be constructed in the vicinity of 8<sup>th</sup> Street East. Existing bridges and culverts associated with highways and local roads will be removed and new structures will be built to cross existing roadways, trails, streams and accommodate stream realignments within the RRP areas.

### Bridge Removal

- Removing the existing 70th Avenue East structure over I-5 (Bridge No. 5/461)
- Removing the existing bridge on Parcel 0420053076 over Hylebos Creek (WDFW ID 921137)
- Removing the existing 70th Avenue East bridge over Hylebos Creek (Bridge No. 5/461A – WDFW ID 921130))
- Removing the existing bridge on Parcel 0420064062 over Hylebos Creek (WDFW ID unknown)
- Removing the existing 67th Avenue East bridge over Hylebos Creek (WDFW ID 921132)
- Removing the existing 62nd Avenue East bridge over Hylebos Creek (WDFW ID 921133)

### Bridge Construction

- Constructing a one-lane structure over SR 509 (Bridge No. 8)
- Constructing a two-lane structure over 70th Avenue East, filling Stream 03 and W4/48/50 (Bridge No. 19)
- Constructing a one-lane structure over 70th Avenue East, filling Stream 03 and W4/48/50 (Bridge No. 20)
- Constructing shared-use path bridges over Fife Ditch (Bridge No. 16 and 17)
- Constructing bridge along 20th Street East over new Surprise Lake Tributary alignment for RRP, impacting W23 and adjacent to W4/48/50 (Bridge No. 14)
- Constructing shared use path bridges for Interurban Trail over new Surprise Lake Tributary alignment for the RRP, adjacent to W17/65 and W4/48/50 (Bridge No. 15)
- Constructing bridge along Northbound (NB) I-5 over new Hylebos Creek alignment for RRP, impacting W17/65 (Bridge No. 9)
- Constructing bridge along Southbound (SB) I-5 over new Hylebos Creek alignment for RRP, near W6 (Bridge No. 10)
- Constructing bridge along SR 99 over new Hylebos Creek alignment for RRP, impacting W23 (Bridge No. 13 to replace the existing SR 99 bridge over Hylebos Creek [Bridge No. 99/422, WDFW ID 921131] which will be removed)
- Constructing a two-lane bridge along 12th Street East over the new alignment of Hylebos Creek for RRP, adjacent to W32 (Bridge No. 5)
- Constructing a bridge along 8th Street East over Hylebos Creek, to be converted to a shared use path, impacting W29 and adjacent to W28 (Bridge No. 6, to replace WDFW culvert 921134)

#### Additional Bridge Work

- Widening the existing I-5 bridges over Hylebos Creek to allow for wildlife corridor, filling W17/65 and adjacent to W6 (Bridge No. 5/462E and Bridge No. 5/462W, WDFW ID 921128)
- Constructing a temporary bridge for northbound I-5 over the existing Hylebos Creek channel; fewer than 24 months in place
- Constructing a temporary bridge for SR 99 over the existing Hylebos Creek channel; fewer than 24 months in place

#### Culvert Removal

- Abandoning and filling the existing WDFW culvert 105 R121616a where Hylebos Creek flows under 12th Street East (see note above for Bridge No. 5 that will be constructed over new Hylebos Creek alignment)
- Abandoning and filling the existing WDFW culvert 105 S012016a where Surprise Lake Tributary flows under 20th Street East (see note above for Bridge No. 14 that will be constructed over Surprise Lake Tributary alignment)
- Removing the existing box culvert under 8th Street East at Hylebos Creek (WDFW culvert 921134) – To be replaced with a bridge for Hylebos Creek crossing under 8th Street East (Bridge No. 6)
- Several culverts will be removed at Surprise Lake Tributary, Stream 03, Stream 08, and streams will be rerouted through the RRP to either no longer pass through a culvert or to pass through a different fish passable culvert/bridge structure at a different location:

#### Culvert Construction

- Constructing a fish passable box culvert across Juniper Street to convey flows into the RRP area.
- Constructing 36-inch-diameter culvert to convey Stream 03 under new shared use path and roadway embankment associated with DDI. This structure will not be fish-passable. This design approach for Stream 03 flow conveyance is based on input WSDOT received during pre- consultation and coordination meetings with the Washington Department of Fish and Wildlife (WDFW).

#### Additional Culvert Work

- Constructing a temporary culvert extension for 12th Street East for the existing Hylebos Creek channel; less than 24 months in place
- Replace former Surprise Lake Tributary open channel under the proposed I-5 SB off-ramp with a 36- inch culvert to convey stormwater flows (Surprise Lake Tributary will be routed away from this area into the RRP.)
- Constructing a temporary culvert under the re-routed SR 99 to temporarily convey Surprise Lake Tributary; less than 24 months in place
- One culvert for the former Surprise Lake Tributary crossing of I-5 will remain to convey stormwater flows (Surprise Lake Tributary will be routed away from this area into the RRP)

Work on local roadways connected with this project will include sidewalk and streetscape landscaping and adjustments to shared use paths where needed. Trail locations will generally parallel new roadway construction. Enhanced water quality treatments facilities, flow control facilities, drainage collection and conveyance system and naturalized stormwater outfall channels will be built to manage stormwater runoff prior to discharging to existing storm drainage systems, Fife Ditch, Wapato Creek and the RRP areas. Stormwater wetland ponds will be constructed in the median of SR 509 and adjacent to I-5.

The project will permanently impact wetlands and wetland buffers. There will be permanent work below the ordinary high water of streams. Areas where there are temporary impacts from construction will be replanted. Roadside restoration includes removal of invasive species and planting native species. Hylebos Creek and Surprise Lake Tributary will be realigned within the project limits as part of the RRP and permanent impacts to wetlands will be mitigated through compensatory mitigation associated with the RRP.

The project site(s) are located within the cities of Tacoma, Fife, Milton, Edgewood, and portions of unincorporated Pierce County within Pierce County WA. Interstate 5 and State Route 99, 167, and 509 run through the project area.

Section 5 T20N R4E  
Section 6 T20N R4E  
Section 7 T20N R4E  
Section 8 T20N R4E  
Section 1 T20N R3E  
Section 2 T20N R3E  
Section 12 T20N R3E  
Section 32 T21N R4E

Water Resource Inventory Area (WRIA)  
10/Puyallup-White

## **AUTHORITIES**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed the WQC request 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.
4. Conformance with Washington's prohibition on discharges that cause or tend to cause pollution of waters of the state of Washington. RCW 90.48.080

## **WATER QUALITY CERTIFICATION CONDITIONS**

With this Water Quality Certification (WQC) and 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, this WQC is granted to the WSDOT subject to the conditions within this Order.

Issuance of this WQC for this proposal does not authorize WSDOT 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 WQC absolves the 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 WSDOT and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to HQ Office, Attn: Federal Permit Manager, via e-mail to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to [pkel461@ecy.wa.gov](mailto:pkel461@ecy.wa.gov). The submittals shall be identified with Order 20165 and include the Applicant name, Corps reference number, 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 September 10, 2020.
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 issues a permit for this project.

7. The Applicant shall send (per condition A.2 above) 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 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 [pkel461@ecy.wa.gov](mailto:pkel461@ecy.wa.gov). Notifications shall be identified with Order No. 20165 and include the Applicant name, Corps reference number, project name, project location, project contact and the contact phone number.
  - a. Immediately following a violation of state water quality standards or when the project is out of compliance with any conditions of this Order.
  - b. At least ten (10) days prior to all pre-construction meetings
  - 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.
  - e. At least seven (7) days prior to the start of impacts to wetlands.
  - f. At least seven (7) days prior to completing each wetland mitigation site.
2. In addition to the phone or e-mail notification required under B.1.a. above, 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.
3. 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.

### **In-Water Work Window Timing**

2. The following in-water work windows shall apply to this project unless otherwise authorized by Ecology.
  - a. Hylebos Creek: July 15 thru September 30
  - b. All other waterbodies: June 15 thru September 30
3. 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 before the change is implemented.

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

1. The waterbodies within the project are categorized Salmonid Spawning, Rearing, and Migration aquatic use designation under the Water Quality Standards for Surface Waters of the State of Washington and the criteria of the categorization apply as described in WAC 173-201A-200 (1), except as specifically modified by this Order.  
Hylebos Creek                      Surprise Lake Tributary  
Stream 3                              Stream 5  
Stream 7/Fife Ditch      Stream 8  
Stream 11                              Stream 12  
Juniper Street Ditch
2. The Applicant shall revise the draft final *SR 167 Completion Project, Stage 1b: SR 167/I-5 to SR 509 – New Expressway Project In water work Water quality Monitoring Protection Plan* (Plan) prepared by Herrera Environmental Consultants, Inc. for WSDOT, dated June 14, 2021, and submit a final plan to Ecology’s Federal Permit Manager (per Condition A.2 of this Order) **for review and approval** at least 30 days prior to beginning any in-water work covered by this Order.
3. Monitoring results shall be submitted monthly to Ecology’s Federal Permit Manager, per condition A.2.
4. Mitigation and/or additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.
5. Visible turbidity anywhere beyond the temporary area of mixing (point of compliance) from the activity shall be considered an exceedance of the standard.

#### **E. Construction**

##### General Conditions

1. The Applicant shall obtain and comply with the conditions of the Construction Stormwater Permit (National Pollutant Discharge Elimination System – NPDES) issued for this project.
2. All clearing limits, stockpiles, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities and maintained until all work is completed for each project.
3. No stockpiling or staging of materials associated with bridge or culvert work shall occur at or below the OHWM of any waterbody.

4. Excavated soil or sediment from channel construction work for the riparian restoration program may be temporarily stockpiled on site, below the OHWM, no longer than 10 days.
  - a. The stockpiles must be stabilized to prevent erosion
  - b. Clean material may be re-used on site
  - c. Material not re-used on site must be removed within 14 days.
5. Protective measures shall be in place to isolate and remove contaminated soils/sediment. Contaminated soils shall be managed and disposed of in accordance with state and local regulations.
6. Within the project limits<sup>1</sup> all environmentally sensitive areas including, but not limited to, wetlands, wetland buffers, and mitigation areas shall be fenced with high visibility construction (HVF) prior to commencing construction activities. Construction activities include equipment staging, materials storage, and work vehicle parking. *Note: This condition does not apply to activities such as pre-construction surveying and installing HVF and construction zone signage.*
  - a. All field staff shall be trained to recognize HVF, understand its purpose and properly install it in the appropriate locations.
  - b. HVF shall be maintained until all work is completed for each project or each stage of a staged project.
7. All clearing limits, stockpiles, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities and maintained until all work is completed for each project.
8. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
9. 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.
10. Turbid de-watering water associated with in-water work shall not be discharged directly to waters of the state, including wetlands. Turbid de-watering water shall be routed to an upland area for on-site or off-site settling.
11. 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. The discharge outfall method shall be designed and operated so as not to cause erosion or scour in the stream channel, banks, or vegetation.

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<sup>1</sup> Project limits include mitigation sites, staging areas, borrow sources, and other sites developed or used to support project construction.

12. All equipment being used below the ordinary high water mark shall utilize biodegradable hydraulic fluid.

#### Equipment & Maintenance

13. 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 50-foot setback area.
14. 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.
15. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
16. Secondary containment and/or absorbent material shall be placed under any cranes when staged over or directly adjacent to waters of the state when they are not in use to prevent spills into state waters.
17. 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.
18. Wash water containing oils, grease, or other hazardous materials resulting from washing of equipment or working areas shall not be discharged into state waters. The Applicant shall set up a designated area for washing down equipment.
19. A separate area shall be set aside, which does not have any possibility of draining to surface waters, for the wash-out of concrete delivery trucks, pumping equipment, and tools.

#### Bridge Construction and Demolition

20. No structural material may enter water of the state during bridge demolition activities.
21. During demolition, structures shall be removed from the banks, existing roads, or from adjacent bridges whenever possible. When necessary, equipment may operate below the OHWM, provided the work is consistent with the project's most recent HPA.
22. When removing footings and piers below the OHWM, containment BMPs to isolate work or excavation areas from waters of the state shall be installed and removed in a manner that minimizes disturbance of in place sediments.

23. The Applicant shall minimize disturbance of vegetation if constructing temporary work platforms for bridge construction and demolition activities.
24. All saw cut water and debris generated from saw cutting activities that occur above water shall be contained and disposed of appropriately with no possible entry to waters of the state.
25. All forms for concrete shall be completely sealed to prevent the possibility of fresh concrete entering waters of the state.
26. All concrete shall be completely cured prior to coming into contact with water.
27. Concrete process water shall not enter waters of the state. Any concrete process/contact water discharged from a confined area with curing concrete shall be routed to upland areas to be treated and disposed of appropriately with no possible entry to state waters.
28. If synthetic or mineral slurries are used for drilled shafts, the slurry water shall not be discharged to waters of the state, including wetlands, or infiltrated in upland areas. The slurry shall be contained and disposed of at an approved site.
29. All excavated sediment associated with bridge construction or demolition shall be disposed upland in an approved disposal site.

Culvert Work & Stream Bypass

30. All culvert work shall be conducted in the dry or in isolation from stream flow.
31. Stream flow isolation work shall not scour the stream channel or banks of the water body in which the work is being done.
32. Prior to returning stream flow to the de-watered work area, all proposed bank protection measures shall be in place.
33. To minimize sediment releases into downstream water, water reintroduced to the channel shall be done gradually and at a rate not exceeding the normal stream flow.
34. Culverts shall be installed to avoid inlet scouring and prevent downstream bank erosion.
35. Fill associated with culvert installation shall be protected from erosion to the 100-year peak flow.

#### Channel Creation

36. Constructing new stream channels shall be done in the dry or isolated from waters of the state.
37. Introducing a stream into a new channel shall be done gradually and at a rate not exceeding the normal stream flow.

#### **F. Wetland Compensatory Mitigation Conditions**

1. The Applicant shall mitigate wetland impacts as described in the *SR 167 Completion Project, Stage 1b: SR 167/I-5 to SR 509 – New Expressway Project Final Stage 1b Mitigation Plan* (hereafter called the “Mitigation Plan”) prepared by Herrera Environmental Consultants, Inc., and dated July, 2021, or as modified by this Order or revised and approved by Ecology.
2. The Applicant shall submit any proposed changes to the Mitigation Plan in writing to Ecology (see A.2) for review and approval 60 days prior to impacting wetlands or streams.
3. The Applicant shall have a qualified wetland professional at the wetland mitigation sites 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 sites cannot be completed within 24 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of:
  - a. SR 167/I-5 to SR 509 – New Expressway (Stage 1b)
  - b. Each mitigation siteWith 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 SR 167/I-5 to SR 509 – New Expressway (Stage 1b) and each mitigation site is 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 and landward of the 100-year floodplain, unless otherwise provided for in the Mitigation Plan.

7. Excavated soil or sediment from mitigation site construction work for the riparian restoration program may be temporarily stockpiled on site, no longer than 60 days.
  - a. The stockpiles must be stabilized to prevent erosion
  - b. The stockpiles may not be placed in areas vegetated with shrubs or trees.
  - c. Clean material may be re-used on site
  - d. Material not re-used on site must be removed within 60 days.
8. The Applicant shall not use polyacrylamide at the mitigation sites.
9. The Applicant shall not use hay or straw on exposed or disturbed soil at the mitigation sites, unless otherwise approved by Ecology.
10. 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.
11. If weed-barrier fabric is used on the site, the Applicant shall use only water-permeable, fully biodegradable, non-toxic weed-barrier fabric for the 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 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 sites unless otherwise provided for in the Mitigation Plan.
15. The Applicant shall place signs at the mitigation areas' boundaries, including buffers, every 100 feet to mark the area as wetland mitigation sites.
16. Upon completion of site grading and prior to planting of each mitigation site, the Applicant shall submit to Ecology written confirmation electronically (email or signed letter) from a surveyor or project engineer that the finished grades are consistent with the approved Mitigation Plan or subsequent Ecology-approved plan changes and also indicate how final elevations were determined.

17. After completing construction and planting of each mitigation site, 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 electronically within 9 months of completing construction and planting of each mitigation site.
  - b. Include the information listed in Attachment B (Information Required for As-built Reports).
  - c. Include documentation of the recorded legal site protection mechanism required in Condition F.18.
18. The Applicant shall provide Ecology with documentation of a recorded Wetland Notice for the wetland mitigation sites. The Applicant shall:
  - a. Send a draft Wetlands Notice to Ecology for review and approval prior to recording,
  - b. Record the approved Wetland Notice with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property,
  - c. Record the Wetland Notice with the site map from the Mitigation Plan or as-built report showing the location of wetlands and their buffers, and
  - d. Send a copy of the recorded Wetland Notice to Ecology with the As-Built Report (see F.17), unless otherwise approved by Ecology.

#### Monitoring and Maintenance

19. The Applicant shall water and maintain all mitigation site plantings for each mitigation site 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 for each mitigation site unless Ecology authorizes in writing the system to remain for a longer period.
20. The Applicant shall monitor each mitigation site for a minimum of 10 years. The Applicant shall use the monitoring methods described in the he Mitigation Plan.
21. The Applicant shall submit to Ecology (see A.2) monitoring reports documenting each mitigation site's conditions for years 1, 2, 3, 5, 7, and 10. The monitoring reports must:
  - a. Be submitted electronically by May 1 following each monitoring year.
  - b. Include the information listed in Attachment C (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. For monitoring years five (5) and ten (10) for each mitigation site, the Applicant shall use the currently approved federal wetland delineation manual and appropriate regional supplement to delineate all compensatory wetlands and include delineation information (e.g., data sheets, maps, wetland size, etc.) in the monitoring reports.
26. At the end of the monitoring period of each mitigation site, the Applicant shall use the October 2014 version of the “Washington State Wetlands Rating System for Western Washington” to rate all wetlands (except those that have been preserved) and include the information in the monitoring report.
27. If the Applicant has not met all compensatory mitigation conditions by the end of the monitoring period, Ecology may require additional monitoring, additional mitigation, or both. Conditions include specifications in the approved Mitigation Plan, such as performance standards for the mitigation sites.
28. The Applicant’s obligation to compensate for wetland impacts under Condition F.1 is not met until the applicant has received written notice from Ecology that the obligation is met.

#### **G. 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 available on site to respond to any 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 and 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 Ecology's 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 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 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:

Penny Kelley  
Department of Ecology  
Headquarters  
P.O. Box 47600  
Olympia, WA 98504-7600  
360-280-8856  
pkel461@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 8th day of July, 2021 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**

SR 167/I-5 to SR 509 – New Expressway (Stage 1b)  
Washington Department of Transportation  
Water Quality Certification Order No. **20165**  
and  
Corps Reference No. **NWS-2020-864-DOT**

I, \_\_\_\_\_, state that I will be involved as an agent or contractor for the Washington Department of Transportation in the site preparation and/or construction of the SR 167/I-5 to SR 509 – New Expressway (Stage 1b) located at within the cities of Tacoma, Milton, Fife and Edgewood, in Pierce County, Washington. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order No. 20165 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

## **Attachment B**

### **Information Required for As-built Reports**

SR 167/I-5 to SR 509 – New Expressway (Stage 1b)  
Water Quality Certification Order # 20165  
And  
Corps Reference # NWS-2020-864-DOT

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 C**

### **Information Required for Monitoring Reports**

SR 167/I-5 to SR 509 – New Expressway (Stage 1b)  
Ecology Order # 20165  
And  
Corps Reference # NWS-2020-864-DOT

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.