



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

*Northwest Regional Office • PO Box 330316 • Shoreline, Washington 98133-9716 • (206) 594-0000
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December 30, 2021

John and Wendy Filipiak
3141 Loomis Trail Road
Custer, WA 98240-9405

RE: Water Quality Certification Order No. **20938** for Corps Reference No. NWS-2021-539,
Filipiak Residence, Whatcom County, Washington

Dear John and Wendy Filipiak:

On July 8, 2021, you submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Filipiak Residence, Whatcom County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the Water Quality Certification Request and supplemental documents 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 Chris Luerkens at (360) 410-4807. The enclosed Order may be appealed by following the procedures described within the Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Burcar", is written over a horizontal line.

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

Enclosure

e-cc: Katrina Jackson, Northwest Wetlands Consulting, LLC
Joel Ingram, WDFW
Randel Perry, Corps of Engineers
Loree' Randall, Ecology
Rebekah Padgett, Ecology
Amy Jankowiak, Ecology
ECY RE FEDPERMITS

IN THE MATTER OF GRANTING A)	WQC ORDER No. 20938
WATER QUALITY)	Corps Reference No. NWS-2021-539
CERTIFICATION TO)	Filipiak Residence, Wetlands located in
John and Wendy Filipiak)	Whatcom County, Washington.
pursuant to 33 U.S.C. 1341 (FWPCA)	
§ 401), RCW 90.48.120, RCW 90.48.260)	
and Chapter 173-201A WAC)	

John and Wendy Filipiak
3141 Loomis Trail Road
Custer WA 98240-9405

On July 8, 2021, John and Wendy Filipiak submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act to the Department of Ecology (Ecology) for the Filipiak Residence Project, Whatcom County, Washington. The following processing dates are referenced below:

- On June 2, 2021, John and Wendy Filipiak submitted a pre-application request.
- On July 9, 2021, the U.S. Army Corps of Engineers (Corps) sent a permit notification to Ecology that indicated that they are processing the project under a Nationwide Permit (NWP) # 29.
- On August 11, 2021, Ecology issued a public notice for the project.

The project proposes to construct a new residence on a 8.8 acre parcel located at 3119 Loomis Trail Road. The proposal will result in the fill of approximately 0.23 acres of wetland for the residence, driveway, and associated improvements. Development will occur in an existing hay field. Mitigation for wetland impacts will occur onsite through approximately 2.78 acres of wetland enhancement, 0.88 acres of wetland preservation, and 1.04 acres of upland preservation.

The project site is located at 3119 Loomis Trail Road, Custer, WA, within wetlands, Whatcom County, Washington, Section 23, Township 40 N., Range 01 E., within Water Resource Inventory Area (WRIA) 1 Nooksack.

AUTHORITIES

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed this 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.

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.
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.
5. The project proponent of the project authorized is responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, local or tribal authorities.

With this Water Quality Certification (WQC) Order, Ecology is granting with conditions, John and Wendy Filipiak's request for a Section 401 Water Quality Certification for the Filipiak Residence Project, wetlands located in Whatcom County. Ecology has determined that the proposed discharge(s) will comply with all applicable state water quality requirements, provided the project is conducted in accordance with the Section 401 Water Quality Certification request that Ecology received on July 8, 2021, the supporting documents referenced in Table 1 below, **and the conditions of this WQC Order.**

Table 1. Supporting Documents

Date Received	Document Type	Title & Date	Author
July 8, 2021	Joint Aquatic Resources Permit Application (JARPA) Form	JARPA (dated May 27, 2021)	Katrina Jackson, Northwest Wetlands Consulting LLC
July 8, 2021	State Environmental Policy Act	SEPA Determination of Nonsignificance, (dated May 13, 2021)	Whatcom County Planning and Development Services
July 8, 2021	Wetland Delineation and Mitigation Plan	Critical Area Assessment, (dated June 2, 2021)	Katrina Jackson, Northwest Wetlands Consulting LLC
December 18, 2021	Wetland Rating	Wetland Rating Summary (dated September 8, 2020)	Katrina Jackson, Northwest Wetlands Consulting LLC

Issuance of this Section 401 Water Quality Certification for this proposal does not authorize John and Wendy Filipiak 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 Section 401 Water Quality Certification absolves the John and Wendy Filipiak from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

The following conditions will be incorporated into the Corps permit and strictly adhered to by John and Wendy Filipiak.

A. General Conditions

1. In this WQC Order, the term “Project Proponent” shall mean the John and Wendy Filipiak and its agents, assignees, and contractors.
2. All submittals required by this WQC Order shall be sent to Ecology’s Headquarters Office, Attn: Federal Permit Manager, via e-mail to fednotification@ecy.wa.gov and cc to chris.luerkens@ecy.wa.gov. The submittals shall be identified with WQC Order #20938 and include the Project Proponent’s name, Corps permit number, project name, project contact, and the contact phone number.
3. Work authorized by this WQC Order is limited to the work described in the WQC request package received by Ecology on July 8, 2021, and the supporting documentation identified in Table 1.
4. The Project Proponent shall keep copies of this WQC 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.
5. The Project Proponent 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 WQC Order are being met.
6. 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.

7. The Project Proponent 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 WQC Order and all permits, approvals, and documents referenced in this WQC Order.
8. This WQC 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 WQC Order.
9. Failure of any person or entity to comply with the WQC Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the state's water quality standards.
10. The Project Proponent shall provide Ecology documentation for review and approval before undertaking any major changes to the proposed project that could significantly and adversely affect water quality, other than those project changes required by this WQC Order.
11. This Order will automatically transfer to a new owner or operator if:
 - a. A written agreement between the Applicant and new owner or operator with the specific transfer date of the WQC Order's obligations, coverage, and liability is submitted to Ecology per condition A.2.;
 - b. A copy of this Order is provided to the new owner or operator; and,
 - c. Ecology does not notify the new Applicant that a new WQC Order is required to complete the transfer.

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 and cc to chris.luerkens@ecy.wa.gov. Notifications shall be identified with WQC Order #20938 Corps reference #NWS-2021-539, and include the Project Proponent name, 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 WQC Order.
 - b. At least ten (10) days prior to start of project construction
2. In addition to the phone or e-mail notification required under B.1.a. above, the Project Proponent 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 WQC Order, the Project Proponent 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 WQC Order is effective upon issuance of the U.S. Corps of Engineers (Corps) permit for this project and will remain valid for the duration of the associated permit for the project.

D. Construction

General Conditions

1. All work in and near waters of the state shall be conducted to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMPs) suitable to prevent exceedances of state water quality standards shall be in place before starting maintenance and shall be maintained throughout the duration of the activity.
2. All clearing limits, and staging areas shall clearly be marked prior to commencing construction activities and maintained until all work is completed for each project.
3. All construction debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an upland disposal site.

Equipment & Maintenance

4. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this WQC Order.
5. Wash water containing oils, grease, or other hazardous materials resulting from washing of equipment or working areas shall not be discharged into state waters including ditches.

E. Wetland Mitigation Conditions

1. The Project Proponent shall mitigate wetland impacts as described in the *Critical Areas Assessment* (hereafter called the "Mitigation Plan") as identified in Table 1 or as required by this Order or revised and approved by Ecology.
2. The Project Proponent shall submit any proposed changes to the Mitigation Plan in writing to Ecology (see A.2) for review and approval before implementing the changes.
3. The Project Proponent shall have a qualified wetland professional at the wetland mitigation site to supervise planting.

Implementation

4. Unless otherwise approved by Ecology in writing, the Project Proponent shall begin the compensatory mitigation project before, or concurrently with, impacting wetlands, or Ecology could use its discretionary authority to require the Project Proponent to provide additional compensation to account for additional temporal loss of wetland functions.
5. The Project Proponent shall ensure that no material is stockpiled within existing wetlands or their buffers at any time.
6. The Project Proponent shall ensure that no construction debris is deposited within existing wetlands or their buffers at the wetland mitigation site(s) at any time, unless otherwise provided for in the Mitigation Plan.
7. The Project Proponent shall not use hay or straw on exposed or disturbed soil at the mitigation site, unless otherwise approved by Ecology.
8. 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.
9. If weed-barrier fabric is used on the site, the Project Proponent 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.
10. If solid or mesh plant protector tubes are used on the mitigation site(s), Ecology strongly recommends that the Project Proponent use fully biodegradable options. If non-biodegradable plant protection options are used, they shall be removed before they interfere with plant growth or before the end of the monitoring period, whichever comes first.
11. The Project Proponent shall place native growth protection signs at the mitigation area's boundaries, including buffers, every 200 feet to mark the area as a wetland mitigation site.
12. The Project Proponent shall install a split rail fence, or other physical markers approved by Ecology, along the boundary of the remaining wetland and approved residential

building envelope and driveway to limit intrusion, encroachment, and other impacts from occurring in the adjacent wetland areas.

13. After completing construction and planting of the mitigation sites(s), the Project Proponent shall submit to Ecology (see A.2) an as-built report, including plan sheets, documenting site conditions at Year Zero. The as-built report must:
 - a. Be submitted within 90 days of completing construction and planting.
 - b. Include the information listed in Attachment A (Information Required for As-built Reports).
 - c. Include documentation of the recorded legal site protection mechanism required in Condition 16.
14. The Project Proponent shall follow the steps below to record a deed notification for the:
 - a. Send a draft deed notification to Ecology for review and approval prior to recording.
 - 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 or as-built report 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 (per condition A.2) with the As-built report (see F.14).

Monitoring and Maintenance

15. The Project Proponent shall water and maintain all mitigation site plantings so as to meet the Mitigation Plan's performance standards. If an irrigation system is installed, it shall be removed by the end of year three unless otherwise approved by Ecology.
16. The Project Proponent shall monitor the mitigation site for a minimum of 10 years. The Project Proponent shall use the monitoring methods described on page(s) 18-19 of the Mitigation Plan.
17. The Project Proponent shall submit to Ecology (see A.2) monitoring reports documenting mitigation site conditions for years 1, 3, 5, 7, and 10. The monitoring reports must:
 - a. Be submitted by December 31 of each monitoring year.
 - b. Include the information listed in Attachment B (Information Required for Monitoring Reports).

18. 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.
19. Prior to implementing contingency measures not specified in the Mitigation Plan, the Project Proponent shall consult with and obtain written approval from Ecology regarding the contingency measures.
20. When necessary to meet the performance standards, the Project Proponent 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.
21. If the Project Proponent 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 site.
22. The Project Proponents obligation to compensate for wetland impacts under Condition F.1 is not met until the Project Proponent has received written notice from Ecology that the obligation is met.

H. Emergency/Contingency Measures

1. The Project Proponent shall have adequate and appropriate spill response and cleanup materials available on site to respond to any release of petroleum products or any other material into waters of the state.
2. 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 Project Proponent shall notify Ecology's Federal Permit Manager per condition A2 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.

YOUR RIGHT TO APPEAL

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

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

- File your appeal and a copy of this WQC 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 WQC Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

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

Address and location information.

Filing an appeal with the PCHB

Mailing Address:

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

Street Address:

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

Serving a copy of the appeal on Ecology:

Mailing Address:

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

Street Address:

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

CONTACT INFORMATION

Please direct all questions about this WQC Order to:

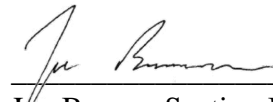
Chris Luerkens
Department of Ecology
(360)-410-4807
chris.luerkens@ecy.wa.gov

MORE INFORMATION

- **Pollution Control Hearings Board Website**
<http://www.eluho.wa.gov/Board/PCHB>
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Chapter 90.48 RCW – Water Pollution Control**
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173.204 WAC – Sediment Management Standards**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>
- **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>
- **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

SIGNATURE

Dated this 30th day of December, 2021, at Shoreline, Washington.



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

Attachment A

Information Required for As-built Reports

Filipiak Residence
Ecology Order # 20938
And
Corps Reference # NWS-2021-539

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

Background Information

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

Mitigation Project Information

- 5) Brief description of the **final** mitigation project with any changes from the approved plan made during construction. Include:
 - a) **Actual** acreage of Cowardin classes and mitigation type(s) (re-establishment, rehabilitation, creation, enhancement, preservation, upland, buffers).
 - b) Important dates, including:
 - i. Start of project construction.
 - ii. When work on the mitigation site began and ended.
 - iii. When different activities such as grading, removal of invasive plants, installing plants, and installing habitat features began and ended.
- 6) Description of any problems encountered and solutions implemented (with reasons for changes) during construction of the mitigation site(s).
- 7) List of any follow-up actions needed, with a schedule.
- 8) Vicinity map showing the geographic location of the site(s) with landmarks.
- 9) Mitigation site map(s), 8-1/2" x 11" or larger, showing the following:
 - a) Boundary of the site(s).
 - b) Topography (with a description of how elevations were determined).
 - c) Installed planting scheme (quantities, densities, sizes, and approximate locations of plants, as well as the source(s) of plant material).
 - d) Location of habitat features.
 - e) Location of permanent photo stations and any other photos taken.Include the month and year when each map was produced or revised. The site map(s) should reflect on-the-ground conditions after the site work is completed.
- 10) Photographs taken at permanent photo stations and other photographs, as needed. Photos must be dated and clearly indicate the direction from which each photo was taken. Photo pans are recommended.
- 11) A copy of any deed notifications, conservation easements, or other approved site protection mechanism.

Attachment B

Information Required for Monitoring Reports

Filipiak Residence
Ecology Order # 20938
And
Corps Reference # NWS-2021-539

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.