



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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February 22, 2022

Mark Netherland  
TC Northwest Development, Inc.  
600 University Street, Suite 2912  
Seattle, WA 98101

Re: Administrative Order No. 21037 to permanently fill/impact 0.12-acre of non-federally regulated wetlands, which are waters of the state, to construct industrial redevelopment at 13510 Canyon Road East in Pierce County, Washington

Dear Mr. Netherland:

The Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application (JARPA) on December 7, 2021, requesting an Administrative Order for proposed work in non-federally regulated wetlands, which are waters of the state. Ecology has determined that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Chapter 90.48 RCW and other applicable requirements of state law.

This approval is subject to the conditions contained in the enclosed Order. **You must familiarize yourself with and abide by the conditions in the Order, including all notification requirements.** If you have any questions, please contact Rick Mraz, PWS at 360-810-0024 or [Richard.mraz@ecy.wa.gov](mailto:Richard.mraz@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in cursive script that reads "Gary D. Graff".

Gary Graff, Section Manager  
Shorelands and Environmental Assistance Program  
Central Regional Office

Enclosure

ec: Amanda Nadjkovic, U.S. Army Corps of Engineers  
Scott Sissons, Pierce County  
ECYREFEDPERMITS@ECY.WA.GOV

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

IN THE MATTER OF ISSUING AN ) ORDER No. 21037  
ADMINISTRATIVE ORDER TO ) Corps Ref. No. NWS-2021-00344  
Mark Netherland )  
TC Northwest Development, Inc., ) 13510 Canyon Road East located in  
pursuant to RCW 90.48.120(2) ) Pierce County, Washington

TO: Mark Netherland  
TC Northwest Development, Inc.  
600 University Street, Suite 2912  
Seattle, WA 98101

This is an Administrative Order requiring Mark Netherland of TC Northwest Development, Inc., to comply with Chapter 90.48 RCW and the rules and regulations of the Department of Ecology (Ecology) by taking certain actions which are described below. RCW 90.48.120(2) authorizes Ecology to issue Administrative Orders requiring compliance whenever it determines that a person has violated or creates a substantial potential to violate any provision of Chapter 90.48 RCW.

The U.S. Army Corps of Engineers (Corps) issued a jurisdictional determination on November 9, 2021, concluding that Wetland A, Wetland B, Driveway Ditch, Agricultural Ditch, and Offsite Southern Ditch are not waters of the U.S. On December 7, 2021, Ecology received a request to impact 0.12-acre (5,106 square feet) of non-federally regulated wetlands, which are waters of the state, to construct industrial redevelopment at 13510 Canyon Road East in Pierce County. The project is located at 13510 Canyon Road East, Section 13, Township 19N, Range 03E, Pierce County, and WRIA 12.

This Administrative Order authorizes 0.12-acre of Category III wetland impacts at the project location. Mitigation for this proposal will consist of onsite, in-kind wetland creation (9,499 square feet) on the central portion of the site and wetland enhancement (50,709 square feet) throughout the site for a total area of mitigation of 1.38 acres (60,208 square feet) and all other actions as proposed in the *Final Mitigation Plan, 13510 Canyon Road East*, dated January 2022.

For purposes of this Order, the term “Applicant” shall mean Mark Netherland, TC Northwest Development, Inc. and its agents, assigns, and contractors.

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

IT IS ORDERED that the Applicant shall comply with the following:

**A. General Conditions:**

1. The Applicant shall construct and operate the project in a manner consistent with the project description contained in the JARPA received by Ecology on December 7, 2021 or as otherwise approved by Ecology.

2. For purposes of this Order, all submittals required by its conditions shall be sent to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to Richard.mraz@ecy.wa.gov. Any submittals shall reference Order No. 21037.
3. The Applicant shall provide access to the project site and mitigation site upon request by Ecology.
4. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and forepersons, and state and local government inspectors.
5. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
6. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order.

**B. Notification Requirements:**

1. The Applicant shall provide written notification to Ecology in accordance with condition A.2. for the following activities:
  - a. Immediately following a violation of the state water quality standards or when the project is out of compliance with any condition of this Order.
  - b. At least seven (7) days prior to conducting work activities in wetlands.
  - c. Within seven (7) days of completing work activities in wetlands.

**C. Wetland Mitigation Conditions:**

1. The Applicant shall mitigate wetland impacts as described in the *Final Mitigation Plan, 13510 Canyon Road East* (hereafter called the "Mitigation Plan") prepared by Soundview Consultants and dated January 2022, or as required by this Order or revised and approved by Ecology.
2. The Applicant shall provide a status report on the mitigation construction to Ecology 13 months from the date of permit issuance. Annual status reports on mitigation construction are required until mitigation construction is complete.

3. The Applicant shall have a wetland professional at the wetland mitigation site to supervise during construction and planting.
4. Unless otherwise approved by Ecology in writing, the Applicant shall begin the compensatory mitigation project before, or concurrent with, impacting wetlands or Ecology may require additional compensation to account for additional temporal loss of wetland functions.
5. The Applicant shall ensure that all excess excavated site material is disposed of in an appropriate location outside of wetlands or their buffers at the wetland mitigation site and above the 100-year floodplain, unless otherwise provided for in the Mitigation Plan.
6. The Applicant shall ensure that no material is stockpiled 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 Applicant shall ensure that no construction debris is deposited within existing wetlands or their buffers at the wetland mitigation site(s) at any time, unless provided for in the Mitigation Plan.
8. The Applicant shall not use polyacrylamide at the mitigation site(s).
9. The Applicant shall not use hay or straw on exposed or disturbed soil at the mitigation site(s), unless otherwise approved by Ecology.
10. If weed-barrier fabric is used on the site, the Applicant shall use only permeable, fully biodegradable, non-toxic weed-barrier fabric for 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.
11. 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.
12. If seeding is used as a best management practice for temporary erosion control, it must be a seed mix consisting of native, annual, non-invasive plant species, unless otherwise approved by Ecology.

13. If solid or mesh plant protector tubes are used on the mitigation site(s), Ecology strongly recommends that the Applicant 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.
14. The Applicant shall follow the steps below to record a deed notification for the 13510 Canyon Road East wetland mitigation site:
  - a. Send a draft deed notification (see Attachment D: Wetland Notice for Deed Notification for an example) to Ecology for review prior to recording and make edits based on Ecology's comments.
  - b. Record, on the mitigation site property deed, a description of the mitigation area identified in the final mitigation plan and a site map from the final wetland mitigation plan 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 within 180 days of this Order, unless otherwise approved by Ecology.

#### **D. Timing**

1. This Order will expire when all its conditions have been met and upon receipt of a mitigation closeout letter from Ecology.

Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

#### **Your right to appeal**

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt 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 all 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.

#### **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 Order to:

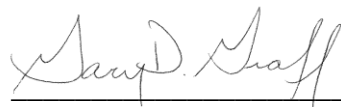
Rick Mraz  
Department of Ecology  
Headquarters  
300 Desmond Drive SE  
Olympia, WA 98504  
360-810-0024  
Richard.mraz@ecy.wa.gov

#### **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>

DATED February 22, 2022, at Olympia, Washington.



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Gary Graff, Section Manager  
Shorelands and Environmental Assistance Program  
Central Regional Office

**Attachment D**  
**Wetland Notice for Deed Notification**  
**(See Condition C.14)**

Trammell Crow  
Administrative Order # 21037  
And  
Corps Reference # NWS-2021-00344

Tax Parcel Number: \_\_\_\_\_

Legal Description: \_\_\_\_\_

Legal Owner: \_\_\_\_\_

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

\_\_\_\_\_, issued on \_\_\_\_\_, 20\_\_\_\_  
(Corps federal reference #) (Ecology Order #)

to \_\_\_\_\_ for \_\_\_\_\_.  
(Applicant Name) (Project Name)

Restrictions on use or alteration of the wetlands may exist due to natural conditions of the property and resulting regulations. A copy of Ecology's Order and the site map from the final wetland mitigation plan indicating the location of wetlands and their buffers is attached hereto.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

State of Washington)  
County of \_\_\_\_\_)

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

GIVEN under my hand an official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC in and for the state of Washington,  
residing at \_\_\_\_\_.

(Amended by Ord. 11200 § 50 (part), 1996)