



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Southwest Region Office
PO Box 47775, Olympia, WA 98504-7775 • 360-407-6300

July 25, 2022

Clark County Department of Public Works
ATTN: Scott Sawyer
PO Box 9810
Vancouver, WA 98666

Re: Water Quality Certification Order No. 21252 for Corps Reference No. NWS-2021-1137,
NE 119th and 152nd Avenue Intersection Improvements, Wetlands, Clark County,
Washington

Dear Scott Sawyer:

On February 3, 2022, Clark County Department of Public Works submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the NE 119th and 152nd Avenue Intersection Improvements Project in Clark 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 Water Quality Certification Order (WQC Order).

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

If you have any questions about this decision, please contact Lori Kingsbury at Lori.kingsbury@ecy.wa.gov. The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

Maria Sandercock, Section Manager
Shorelands and Environmental Assistance Program
Southwest Region Office

Enclosure

NE 119th and 152nd Avenue Intersection Improvements

Aquatics No. 140947

Corps No. NWS-2021-1137

July 25, 2022

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ec: Jim Carsner, U.S. Army Corps of Engineers
Pam Schense, Clark County Department of Public Works
Loree' Randall, Ecology
Lori Kingsbury, Ecology
Lori White, Ecology
ECYREFEDPERMITS@ecy.wa.gov – Aquatics No. 140947

IN THE MATTER OF GRANTING A) **ORDER No. 21252**
WATER QUALITY CERTIFICATION TO) **Corps Reference No. NWS-2021-1137**
Clark County Department of Public Works) NE 119th and 152nd Avenue Intersection
pursuant to 33 U.S.C. 1341 (FWPCA §) Improvements, within Wetlands, Clark County,
401), RCW 90.48.120, RCW 90.48.260 and) Washington
Chapter 173-201A WAC)

Clark County Department of Public Works
Attn: Scott Sawyer
PO Box 9810
Vancouver, WA 98666

On February 3, 2022, Clark County Department of Public Works submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the NE 119th and 152nd Avenue Intersection Improvements project in Clark County, Washington. The following required processing dates are referenced below:

- On February 3, 2022, Clark County Department of Public Works submitted a revised Request for a 401 Water Quality Certification.
- On April 5, 2022, the U.S. Army Corps of Engineers (Corps) sent an email notification to Ecology that they are reviewing the project for authorization under Nationwide Permit No. 23 and requires an individual Section 401.
- On April 26, 2022, Ecology issued a public notice for the project.

This project entails removing the existing 4-way signalized intersection and illumination, and constructing a single-lane roundabout with new pedestrian facilities, illumination, and stormwater management system. The new roundabout and four approaches require relocation of existing roadside ditches outward. Associated utility extensions and/or relocations will be required to varying degrees within the project area

There are seven (7) wetlands and nine (9) roadside ditches located within the project area. All seven wetlands are category III. The project will have 0.488 acres direct wetland impacts and 1.083 acres of impacts to wetland buffers. Mitigation to compensate for wetland impacts will be through the purchase of 1.566 credits from the Terrace Mitigation Bank.

The project site is located at NE 119th Street and NE 152nd Avenue in an unincorporated area of Clark County identified as Brush Prairie, Clark County, Washington; SW Quarter of Section 25, SE Quarter of Section 26, NE Quarter of Section 35, and NW Quarter of Section 36; Township 3 North, and Range 2 East; within Water Resource Inventory Area (WRIA) 28, Salmon-Washougal Watershed.

With this Order, Ecology is granting Clark County Department of Public Works' request for a Section 401 Water Quality Certification for the NE 119th Street and NE 152nd Avenue Intersection Improvements project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on February 3, 2022, and the following supporting documentation:

- *Wetland Mitigation Bank Use Plan, NE 119th Street and NE 152nd Avenue Intersection Improvements, Clark County Project PRJ #0000537* prepared by Harper Houf Peterson Righellis Inc. dated May 20, 2022.

Based on the information submitted, Ecology has determined that the discharge from the project will comply with state water quality requirements. Prior to undertaking any changes that materially alter the project, Clark County Department of Public Works must contact Ecology to determine whether a new Section 401 Water Quality Certification is required.

Issuance of this Section 401 Water Quality Certification for this proposal does not authorize Clark County Department of Public Works to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC), or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this Section 401 Water Quality Certification absolves Clark County Department of Public Works from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

Special Conditions: Wetland Mitigation

1. Clark County Department of Public Works shall mitigate wetland impacts as described in the *Wetland Mitigation Bank Use Plan, NE 119th Street and NE 152nd Avenue Intersection Improvements, Clark County Project PRJ #0000537* prepared by Harper Houf Peterson Righellis Inc. dated May 20, 2022 (hereafter called the “Mitigation Plan”), as identified above, or as required by this Order.
 - *Justification - Alteration of water quality necessitates the use of mitigation as a method of controlling pollution. When mitigation is provided, the impacts are not considered significant enough to water quality, at least in the long-term. The water quality standards, along with mitigation, protect wetlands as well as permitting some level of degradation where unavoidable or necessary.*
 - *Citation – 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A-260 (3)(i-ii) WAC, Chapter 173-201A-300 WAC, and Chapter 173-225-010 WAC.*
2. Clark County Department of Public Works shall submit any proposed changes to the Mitigation Plan in writing to Ecology for review before implementing the changes.
 - *Justification –When mitigation is provided, the water quality impacts are offset and not considered significant, at least in the long-term. Changes to impacts or mitigation must be considered when evaluating mitigation adequacy.*
 - *Citation – 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A-260 (3)(i-ii) WAC, Chapter WAC 173-201A-300 WAC, and Chapter 173-225-010 WAC.*

3. Prior to impacting wetlands, Clark County Department of Public Works shall submit to Ecology documentation from the bank sponsor verifying the purchase of 1.566 wetland mitigation bank credits (credits) from the Terrace Mitigation Bank. This documentation must include the Ecology Order Number, Order issuance date, impact acreage, the amount of credits required by the Order, and date of credit purchase.
 - *Justification - This condition is necessary to ensure the compensatory mitigation was actually provided by the bank.*
 - *Citation – 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A-260 (3)(i-ii) WAC, Chapter 173-201A-300 WAC, and Chapter 173-225-010 WAC.*
4. Unless otherwise authorized by this WQC Order, Clark County Department of Public Works shall complete the purchase of credits before impacting wetlands or Ecology could use its discretionary authority to require Clark County Department of Public Works to provide additional compensation to account for additional temporal loss of wetland functions.
 - *Justification - Mitigation that is not emplaced concurrent with impacts will result in degradation of existing beneficial uses of the wetlands affected by the proposed action through temporal loss of functions.*
 - *Citation – 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A-260 (3)(i-ii) WAC, Chapter 173-201A-300 WAC, and Chapter 173-225-010 WAC.*
5. If Clark County Department of Public Works has not purchased credits within 13 months of the date of this Order, they shall inform Ecology, in writing, of the status of:
 - a. NE 119th Street and NE 152nd Avenue Improvement project
 - b. When bank credits will be purchased

With the:

- c. Reason for the delay
- d. Expected date of completion

Clark County Department of Public Works shall submit an updated written notification every 12 months thereafter until the NE 119th Street and NE 152nd Avenue Improvement project is complete and the required credits are purchased.

- *Justification - Mitigation that is not emplaced concurrent with impacts will result in degradation of existing beneficial uses of the wetlands affected by the proposed action through temporal loss of functions.*
- *Citation – 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A-260 (3)(i-ii), Chapter 173-201A-300 WAC, and Chapter 173-225-010 WAC.*

6. Clark County Department of Public Works' obligation to compensate for wetland impacts under Condition 1 of this section is not met until Clark County Department of Public Works has received written notice from Ecology that the obligation is met.
- *Justification - If the mitigation site is not meeting all compensatory mitigation conditions then the water quality impacts will not be offset by the mitigation.*
 - *Citation – 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A-260 (3)(i-ii) WAC, Chapter 173-201A-300 WAC, and Chapter 173-225-010 WAC.*

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 Clark County Department of Public Works for the NE 119th Street and NE 152nd Avenue Improvement project

This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues a Department of the Army (DA) permit for this project. Order No. 21252 will remain valid for the duration of the associated DA permit. Clark County Department of Public Works should send a copy of the final DA permit to fednotification@ecy.wa.gov within two weeks of receiving it.

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. The appeal process is governed by RCW 43.21B and WAC 371-08. "Date of receipt" is defined in RCW 43.21B.001(2). More information is available at <https://eluh0.wa.gov/content/11>.

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

- File your notice of appeal and a copy of this Order with the PCHB (see filing options below). "Filing" means actual receipt by the PCHB during regular business hours as defined in WAC 371-08-305 and -335. "Notice of appeal" is defined in WAC 371-08-340.
- Serve a copy of your notice of appeal and this Order on the Department of 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 RCW 43.21B and WAC 371-08.

Filing an appeal with the PCHB:

For the most current information regarding filing with the PCHB, visit:
<https://eluhwa.gov/content/11>

Filing by mail

Mailing Address:

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

Filing in person (or by certified mail/courier)

Street Address:

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

Filing electronically

Email address:

pchb-shbappeals@eluhwa.gov

Serving a copy of the appeal on Ecology:

Electronic copies of appeals are not accepted at the Department of Ecology per WAC 371-08-305(10).

Filing by mail

Mailing Address:

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

Filing in person (or by certified mail/courier)

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:

Lori Kingsbury
Department of Ecology
PO Box 47775
Olympia, WA 98504-47775
Lori.kingsbury@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



Maria Sandercock, Section Manager
Shorelands and Environmental Assistance Program
Southwest Region Office
Department of Ecology

July 25, 2022

Date