



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Southwest Region Office

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

August 8, 2022

Haertl Development Company
ATTN: Roland Haertl
632 NW View Lane
Camas, WA 98607-9378

Re: Water Quality Certification Order No. 21290 for Corps Reference No. NWS-2021-0059,
Cedars East Subdivision, Wetlands, Brush Prairie, Clark County, Washington

Dear Roland Haertl:

On May 13, 2022, Haertl Development Company submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Cedars East Subdivision located in Brush Prairie, 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

Haertl Development Company

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ec: Jim Carsner, U.S. Army Corps of Engineers
Kevin Grosz, Olson Environmental, LLC
William Saunders, Cedars Golf, LLC
Loree' Randall, Ecology
Lori Kingsbury, Ecology
Lori White, Ecology
ECYREFEDPERMITS@ecy.wa.gov – Aquatics No. 140031



IN THE MATTER OF GRANTING A) **ORDER No. 21290**
WATER QUALITY CERTIFICATION TO) **Corps Reference No. NWS-2021-0059**
Haertl Development Company) Cedars East Subdivision, within Wetlands, Brush
pursuant to 33 U.S.C. 1341 (FWPCA §) Prairie, Clark County, Washington
401), RCW 90.48.120, RCW 90.48.260 and)
Chapter 173-201A WAC)

Haertl Development Company
Attn: Roland Haertl
632 NW View Lane
Camas, WA 98607-9378

On May 13, 2022, Haertl Development Company submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Cedars East Subdivision project in Clark County, Washington. The following required processing dates are referenced below:

- On January 13, 2021, Haertl Development Company submitted a pre-filing meeting request.
- On May 16, 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. 29 and requires an individual Section 401.
- On May 25, 2022, Ecology issued a public notice for the project.

This project proposes to construct a residential subdivision consisting of 34 lots and associated infrastructure including a stormwater facility, and a neighborhood road that connects NE 180th Street to NE 183rd Street.

The project will directly impact approximately 0.41 acres of category III wetlands and indirectly impact approximately 2.62 acres of category II and category III wetlands. Mitigation to compensate for wetland impacts will occur through the purchase of 1.82 mitigation bank credits from Terrace Mitigation Bank. Additionally, approximately 20,100 square feet of a woody species hedgerow will be planted (along with 2,040 linear feet of split rail fence) to create a buffer/screen between the existing onsite wetlands and the proposed housing development lots.

The project site is located in an unincorporated area of Clark County identified as Brush Prairie, Clark County, Washington; SE and SW Quarters of Section 12; Township 3 North, and Range 2 East; within Water Resource Inventory Area (WRIA) 28, Salmon-Washougal Watershed.

With this Order, Ecology is granting Haertl Development Company's request for a Section 401 Water Quality Certification for the Cedars East Subdivision project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on May 13, 2022, and the following supporting documentation:

- *Cedars East Subdivision Wetland Mitigation Plan, USACE Ref: NWS-2021-0059 prepared by Olson Environmental, LLC dated May 15, 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, Haertl Development Company 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 Haertl Development Company 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 Haertl Development Company 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. Haertl Development Company shall mitigate wetland impacts as described in the *Wetland Cedars East Subdivision Wetland Mitigation Plan* prepared by Olson Environmental, LLC dated May 15, 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. Haertl Development Company 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, Haertl Development Company shall submit to Ecology documentation from the bank sponsor verifying the purchase of 1.82 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, Haertl Development Company shall complete the purchase of credits before impacting wetlands or Ecology could use its discretionary authority to require Haertl Development Company 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 Haertl Development Company has not purchased credits within 13 months of the date of this Order, they shall inform Ecology, in writing, of the status of:
 - a. The Cedars East Subdivision
 - b. When bank credits will be purchased

With the:

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

Haertl Development Company shall submit an updated written notification every 12 months thereafter until the Cedars East Subdivision 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. Haertl Development Company's obligation to compensate for wetland impacts under Condition 1 of this section is not met until Haertl Development Company 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.*
7. Haertl Development Company shall submit monitoring reports documenting the conditions of the onsite mitigation (buffer hedgerow area) for years 1, 2, 3, and 5 (consistent with the Mitigation Plan) via e-mail to Ecology's Headquarters Office, Attn: Federal Permit Manager at fednotification@ecy.wa.gov with a copy to Lori.kingsbury@ecy.wa.gov. The submittals shall be identified with WQC Order No. 21290 and include the Project Proponent's name, Corps permit number, project name, project contact, and the contact phone number.
- *Justification- Monitoring reports track the environmental progress of the mitigation site and are necessary to track environmental changes at mitigation sites to ensure success of the mitigation site.*
 - *Citation - 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.*
8. Haertl Development Company shall provide a copy of the recorded Notice on Title for the onsite critical areas (described on page 17 of the Mitigation Plan) via e-mail to Ecology's Headquarters Office, Attn: Federal Permit Manager at fednotification@ecy.wa.gov with a copy to Lori.kingsbury@ecy.wa.gov by the end of the monitoring period.
- *Justification - The mitigation plan needs to ensure that measures will be taken to protect the site for the long term to ensure that wetland functions and values are replaced, thereby preserving beneficial uses and offsetting pollution.*
 - *Citation - 40 CFR 131.12, 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 Haertl Development Company for the Cedars East Subdivision 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. 21290 will remain valid for the duration of the associated DA permit. Haertl Development Company 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://eluhwa.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 electronically

Email address:

Filing in person (or by certified mail/courier)

Street Address:

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

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

August 8, 2022
Date