



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Region Office
PO Box 330316, Shoreline, WA 98133-9716 • 206-594-0000

August 23, 2022

Dennis W. Daley Trust
ATTN: Dennis Daley
462 Stevens Avenue, #201
Solana Beach, CA 92075

Re: Water Quality Certification Order No. **21266**, Corps No. **202100142**, Brookside Trails,
Snohomish County, Washington

Dear Dennis Daley:

On June 17, 2022, Dennis W. Daley Trust submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Brookside Trails, in Snohomish 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 Doug Gresham at (425) 429-1846 or Doug.Gresham@ecy.wa.gov. The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

Joe Burcar
Section Manager, Shorelands & Environmental Assistance Program
Department of Ecology at Northwest Regional Office

Brookside Trails
Aquatics No. 140812, Corps No. 202100142
August 23, 2022
Page 2 of 2

Enclosure (1)

Sent via email to: ddaley@daleyheft.com

E-cc: Kristina Tong, U.S. Army Corps of Engineers
Joanne Bartlett, Ecological Land Services Inc.
enr@snoqualmientribe.us, Snoqualmie Indian Tribe
Doug Gresham, Department of Ecology
Rowan Kelsall, Department of Ecology
Rebekah Padgett, Department of Ecology
Loree' Randall, Department of Ecology
Jennifer Riedmayer, Department of Ecology
ECYREFEDPERMITS@ecy.wa.gov – Aquatics No. 140812

IN THE MATTER OF GRANTING A)	ORDER No. 21266
WATER QUALITY CERTIFICATION TO)	Corps Reference No. 202100142
Dennis W. Daley Trust)	Brookside Trails located in Marysville,
pursuant to 33 U.S.C. 1341 (FWPCA §)	Snohomish County, Washington
401), RCW 90.48.120, RCW 90.48.260)	
and Chapter 173-201A WAC)	

Dennis W. Daley Trust
 Attn: Dennis Daley
 PO Box 757
 Rancho Santa Fe, CA 92067

On June 17, 2022, Dennis W. Daley Trust submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Brookside Trails, Snohomish County, Washington. The following required processing dates are referenced below:

- On May 12, 2022, the Dennis W. Daley Trust submitted a pre-filing meeting request.
- On June 22, 2022, Dennis W. Daley Trust submitted additional information and the Department of Ecology (Ecology) considered the Request valid on June 22, 2022.
- On July 8, 2021, the U.S. Army Corps of Engineers (Corps) sent an email notification to Ecology that they were reviewing the project for authorization under Nationwide Permit No. 29, and requires an individual Section 401.
- On June 29, 2022, Ecology issued a public notice for the project.

This project proposes to develop 23 residential lots, an interior road, and a storm water detention facility. The project will cause 0.028 acres of direct impacts and 0.105 acres of indirect impacts to Wetland D, which will be mitigated at the Snohomish Basin Mitigation Bank by purchasing 0.069 credits. The culvert for a King Creek tributary will be replaced and a minor amount of excavation will occur when it is dry to realign the channel.

The project site is located at 6925 Sunnyside Boulevard, Marysville, Snohomish County, Washington, Section 2, Township 29 N., Range 5 E., within Water Resource Inventory Area (WRIA) #7–Snohomish Watershed.

With this WQC Order, Ecology is granting Dennis W. Daley Trust’s request for a Section 401 Water Quality Certification for the Brookside Trails project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on June 17, 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, Dennis W. Daley Trust 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 Dennis W. Daley Trust 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 Dennis W. Daley Trust from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

Wetland Mitigation Conditions

1. The Applicant shall mitigate wetland impacts as described in the *Bank Use Plan for Brookside Trails*, prepared by Ecological Land Services, dated January 31, 2021, (hereafter called the "Mitigation Plan") or as revised and approved by Ecology.
 - *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 - 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. Prior to impacting wetlands, the Project Proponent shall submit to Ecology documentation from the bank sponsor verifying the purchase of wetland mitigation bank credits from the Snohomish Basin 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.*

3. Unless otherwise authorized by this WQC Order, the Project Proponent shall complete the purchase of credits before 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.
 - *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.*

In-water-Work Conditions

1. The Project Proponent shall obtain and comply with the conditions of the Construction Stormwater General Permit (National Pollutant Discharge Elimination System - NPDES) issued for this project.
 - *Justification - Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – 40 CFR 122 (delete CFR if NPDES is not EPA), Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300-330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
2. The Project Proponent shall conduct water quality monitoring as described in the approved Water Quality Monitoring Plan (WQMP) for Brookside Trails, prepared by Ecological Land Services, Inc., dated August 10th, 2022.
 - *Justification Ecology must protect waters of the state from all discharges and potential discharges of pollution and know if there are exceedances of the water quality standards that protect aquatic life and beneficial uses*
 - *Citation - RCW 90.48, RCW 90.48.030, Chapter 173-201A WAC, 173-201A-300-330 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 the Dennis W. Daley Trust for the Brookside Trails 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. 21266 will remain valid for the duration of the associated DA permit. Dennis W. Daley Trust 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://eluh.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://eluh.wa.gov/content/11>

Filing by mail

Mailing Address:

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

Filing electronically

E-mail Address:

Filing in person (or by certified mail/courier)

Street Address:

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

pchb-shbappeals@eluh.wa.gov

Serving a copy of the appeal on Ecology:

Electronic copies of appeals are not accepted at the Department 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:

Doug Gresham
Department of Ecology
Northwest Region Office
(425) 429-1846
doug.gresham@ecy.wa.gov

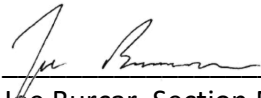
More Information

- **Pollution Control Hearings Board Website**
<http://www.eluho.wa.gov/content/11>
- **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 23rd day of August, 2022 at the Department of Ecology, Shoreline, Washington



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