



**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

Southwest Region Office

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

October 31, 2022

George Cluen
Cluen Corner, LLC
PO Box 1093
Camas, WA 98607

Re: Administrative Order No. 21229 to permanently fill/impact 0.686 acres of non-federally regulated wetlands, which are waters of the state, to construct Cluen Corner in Clark County, Washington

Dear George Cluen:

The Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application (JARPA) on March, 7, 2022, requesting authorization 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 Meghan Tait at (360) 210-2783 or meghan.tait@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Lauren Driscoll, Wetlands Section Manager
Shorelands and Environmental Assistance Program

Enclosure

Sent via email to: Gcluen2002@yahoo.com

ec: James H. Carsner, U.S. Army Corps of Engineers
Lance Watt, Clark County
Jim Barnes, Cascadia Ecological Land Services Inc.
ECYREFEDPERMITS@ECY.WA.GOV

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF ISSUING AN) ORDER No. 21229
ADMINISTRATIVE ORDER TO) Corps Ref. No. NWS-2021-131
George Cluen) Cluen Corner, located in
pursuant to RCW 90.48.120 and WAC 173-201A) Clark County, Washington.

TO: Cluen Corner, LLC
Attn: George Cluen
PO Box 1093
Camas, WA 98607

This is an Administrative Order requiring Cluen Corner, LLC 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 April 28, 2021, concluding that Wetland A, B, C, and D and Roadside Ditch (Ditch 1a and Ditch 1b) are not waters of the U.S. On March 7, 2022, Ecology received a request to impact 0.686 acres of non-federally regulated wetlands, which are waters of the state, to construct Cluen Corner in Clark County. The project is located at parcel 159109000, NW 1/4, S12, T2N, R2E, Clark County, and WRIA 28 Salmon-Washougal.

This Administrative Order authorizes 0.686 acres of Category 3 wetland impacts at the project location. Mitigation for this proposal will consist of 0.686 acres of credit purchase from the Terrace Wetland Mitigation Bank and all other actions as proposed in the *Wetland Bank Use Plan* dated March 7, 2022.

For purposes of this Order, the term "Applicant" shall mean Cluen Corner, LLC 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 March 7, 2022, 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 and a cc to meghan.tait@ecy.wa.gov. Any submittals shall reference Order No. 21229.
3. The Applicant shall provide access to the project 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. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. **These statements shall be provided to Ecology before construction begins at the project.**

B. Notification Requirements:

1. The Applicant shall provide written notification to Ecology in accordance with condition A.2 above 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 *Wetland Bank Use Plan* (hereafter called the "mitigation plan") prepared by Jim Barnes, Cascadia Ecological Services Inc., dated March 7, 2022, or as revised and approved by Ecology.

2. The Applicant shall notify and submit in writing to Ecology (see A.2) any proposed changes to the amount of wetland impacts or revisions to the mitigation plan before implementing the changes.
3. Prior to impacting wetlands, the Applicant shall submit to Ecology documentation from the bank sponsor verifying the purchase of 0.686 mitigation bank credits (credits) from the Terrace Wetland 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.
4. The Applicant shall complete the purchase of credits before the impacts to wetlands occur, or Ecology may require additional compensation to account for temporal loss of wetland functions.
5. If the Applicant has not purchased credits within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of:
 - a. Cluen Corner
 - b. When bank credits will be purchased

With the:

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

The Applicant shall submit an updated written notification every 12 months thereafter until Cluen Corner is complete and the required credits are purchased.

6. Until the Applicant has received written notice from Ecology that the Mitigation Plan has been fully implemented, the Applicant's obligation under Condition C.1 to mitigate for wetland impacts is not met.

D. Timing

1. This Order is valid until the Applicant meets all its requirements and the applicant has received written notification from Ecology to that effect.

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.

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 Order to:

Meghan Tait, Shoreland and Wetland Specialist
Department of Ecology
12121 NE 99th St., Suite 2100
Vancouver, WA 98682
360-210-2783
meghan.tait@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 October 31, 2022, at Olympia, Washington.



Lauren Driscoll, Wetlands Section Manager
Shorelands and Environmental Assistance Program