



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600, Olympia, WA 98504-7600 • 360-407-6000

September 22, 2023

Pahlisch Commercial
Attn: Kathryn Joseph
1201 Main Street
Vancouver, WA 98660

Re: Water Quality Certification Order No. **22059** (Corps No. **NWS-2022-0590**), Pahlisch Commercial – The Sutton, King County, Washington

Dear Kathryn Joseph:

On October 26, 2022, Pahlisch Commercial submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Pahlisch Commercial – The Sutton, King 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 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 White at (564) 669-1396. The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

Loree' Randall, Section Manager
Aquatic Permitting & Protection Section
Shorelands and Environmental Assistance Program

WQC Order No. 22059, Corps No. NWS-2022-0590
Aquatics No. 141838
September 22, 2023
Page 2 of 2

Enclosure (1)

By certified mail: 9489 0090 0027 6383 6854 10

Sent via e-mail: kathrynj@pahlisch.com

E-cc: Samantha Stanford, U.S. Army Corps of Engineers
Sara Potter, Soundview Consultants
Alex Murphy, Soundview Consultants
Lori White, Ecology
Rowan Kelsall, Ecology
ECYREFEDPERMITS@ecy.wa.gov

In The Matter of Granting a Water Quality
Certification to Pahlisch Commercial
pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW
90.48.260 and Chapter 173-201A WAC

Pahlisch Commercial
Attn: Kathryn Joseph
1201 Main Street
Vancouver, WA 98660

WQC Order No.	22059
Corps Reference No.	NWS-2022-0590
Site Location	Pahlisch Commercial – The Sutton project located within Wetland A, Kent, King County, Washington.

Pahlisch Commercial submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Pahlisch Commercial – The Sutton project, King County, Washington. The following required processing dates are referenced below:

- On 7/15/2022, the Pahlisch Commercial submitted a pre-filing meeting request.
- On 10/26/2022, Ecology received a request for Clean Water Section 401 Water Quality Certification.
- On 3/24/2023, 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 4/5/2023, Ecology issued a public notice for the project.

This project proposes to develop nine apartment buildings and associated site access, parking, utilities, and stormwater infrastructure including an underground stormwater detention vault with enhanced water quality treatment and bioswale. One of the apartment buildings will include a commercial café. Additionally, the project proposes a 5,000 sq ft. clubhouse and maintenance building alongside the residential buildings. The proposed development will fill a portion of Wetland A. There are two existing culverts onsite associated with Ditch Z and Wetland A that would be removed. The applicant is proposing to purchase in-lieu fee credits from the King County Mitigation Reserves Program and enhance a small area of stream buffer to compensate for impacts.

The project site is located at 3101 South 240th Street, Kent, King County, Washington, Section 22, Township 22 N., Range 4 E., within Water Resource Inventory Area (WRIA) 9 Duwamish-Green.

With this WQC Order, Ecology is granting with conditions Pahlisch Commercial's request for a Section 401 Water Quality Certification for the Pahlisch Commercial – The Sutton project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on 10/26/2022, and the following supporting documentation:

1. Additional wetland determination data forms were submitted for data points DP-6U and DP-7U dated 5/8/2023, supplemental information for wetland delineation.
2. Soundview Technical Memorandum dated 6/21/2023, regarding the delineation of the southern wetland boundary.
3. Revised Sutton Mitigation Plan dated 6/22/2023, regarding the project's mitigation strategies.

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, Pahlisch Commercial 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 Pahlisch Commercial 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 the Applicant 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 Conditions

1. Pahlisch Commercial (Kathryn Joseph, Pahlisch Commercial) – shall mitigate wetland impacts as described in the Mitigation Plan, The Sutton, Revised June 22, 2023 (hereafter called the "Mitigation Plan"), or as required by this WQC Order.
 - Justification - Alteration of water quality necessitates the use of mitigation as a method of controlling pollution. When adequate 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 WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300, and WAC 173-225-010.
2. Pahlisch Commercial (Kathryn Joseph, Pahlisch Commercial) shall obtain a Statement of Sale from the Sponsor as documentation of purchase of 23.2076 credits for this impact project. Pahlisch Commercial shall submit a copy of the Statement of Sale to Ecology within 60 days of receipt or before impacting wetlands, whichever is sooner for the debit project. Documentation from the Sponsor shall include the Ecology Order number, Order issuance date, description of mitigation credits purchased, signatures from the Sponsor and Pahlisch Commercial.
- Justification - This condition is necessary to ensure the compensatory mitigation was actually provided by the in-lieu-fee program.
 - Citation – 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, RCW 47.85.040, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A WAC, WAC 173-201A-260 (3)(i-ii), and WAC 173-201A-300.
3. Unless otherwise authorized by this Order, Pahlisch Commercial (Kathryn Joseph, Pahlisch Commercial) shall complete the purchase of credits before impacting wetlands. Otherwise, Ecology may require Pahlisch Commercial 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, RCW 47.85.040, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300, and WAC 173-225-010 WAC.
4. Pahlisch Commercial (Kathryn Joseph, Pahlisch Commercial) shall water and maintain all stream buffer restoration plantings so as to meet the Mitigation Plan's performance standards. If an irrigation system is installed, it shall be removed by the end of year three unless otherwise provided for in the Mitigation Plan.
- Justification - Designing and implementing an appropriate maintenance plan is crucial to the success of a 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 WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300, and WAC 173-225-010.
5. Pahlisch Commercial (Kathryn Joseph, Pahlisch Commercial) shall submit to Ecology monitoring reports documenting stream buffer restoration conditions for years 1, 3, and 5. The monitoring reports must:
- a) Be submitted by December 31 of each monitoring year.
- 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 WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300 and WAC 173-225-010.

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 with conditions to the Pahlisch Commercial for the Pahlisch Commercial – The Sutton 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. WQC Order No. **22059** will remain valid for the duration of the associated DA permit. Pahlisch Commercial should send a copy of the final DA permit to fednotification@ecy.wa.gov within two weeks of receiving it. To transfer this Order to a new owner or operator, complete a Request for Transfer of Order form following the instructions at the top of the form. Link to form:

<https://apps.ecology.wa.gov/publications/SummaryPages/ECY070695.html>.

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 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 notice of appeal and a copy of this Order with the PCHB (see filing information 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 mail, in person, or by email (see addresses below).

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Filing an appeal

Filing with the PCHB

For the most current information regarding filing with the PCHB, visit: <https://elaho.wa.gov/> or call: 360-664-9160.

Service on Ecology

Street Addresses:

Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

Mailing Addresses:

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

E-Mail Address:

ecologyappeals@ecy.wa.gov

Americans with Disabilities Act Information

Accommodation Requests

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-7668 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

Contact Information

Please direct all questions about this WQC Order to:

Lori White
Department of Ecology
(564) 669-1396
Lori.White@ecy.wa.gov

More Information

- **Pollution Control Hearings Board Website**
<http://www.eluho.wa.gov/>
- **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>

WQC Order No. 22059, Corps No. NWS-2022-0590

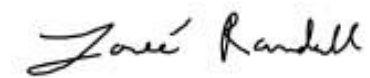
Aquatics ID No. 141838

September 22, 2023

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Signature

Dated this 22nd day of September 2023, at the Department of Ecology, Lacey, Washington.

A handwritten signature in black ink, appearing to read "Loree' Randall". The signature is written in a cursive, flowing style.

Loree' Randall, Section Manager

Aquatic Permitting & Protection Section

Shorelands and Environmental Assistance Program