



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

March 12, 2024

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

Re: Amendment to 401 Water Quality Certification Order No. 22059 for U.S. Army Corps of Engineers Reference No. NWS-2022-0590, Pahlisch Commercial, Wetland A, Kent, King County, Washington

Dear Kathryn Joseph:

Enclosed is an amendment to Water Quality Certification Order No. 22059 issued on September 22, 2023, for the above project. We have also included a strikeout version of the Water Quality Certification that reflects the changes made. All other conditions of Water Quality Certification No. 22059 remain in effect.

The purpose of this amendment is to revise the mitigation plan and the amount of In Lieu Fee credits required to be purchased for the mitigation of wetland impacts to Wetland A. Wetland Mitigation Conditions 2 of the original water quality certification have been revised.

If you have any questions, please contact Lori White at (509) 424-2887. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

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

Enclosure (2)

First Amendment to Order No. 22059
Aquatics No. 141838, Corps No. NWS-2022-0590
March 12, 2024
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By certified mail: 9489 0090 0027 6347 8919 94

Sent via e-mail: kathrynj@pahlisch.com

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

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

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

On September 22, 2023, the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to Pahlisch Commercial (Kathryn Joseph) for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request on March 5, 2024, for an amendment to the existing Water Quality Certification. This request is due to an updated wetland boundary survey which resulted in a decreased amount of wetland impacts (originally 18,103 ft² changed to 17,013 ft²). The reduction of wetland impacts requires the purchase of fewer In Lieu Fee credits to mitigate the wetland impacts.

WQC Order No. 22059 dated September 22, 2023, is hereby amended as follows:

I. Condition number 2 which reads:

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.

Is replaced with:

Pahlisch Commercial (Kathryn Joseph, Pahlisch Commercial) shall obtain a Statement of Sale from the Sponsor as documentation of purchase of 21.024 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.

No other conditions or requirements of the above referenced Order are affected by this amendment.

Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if it appears necessary to further protect the public interest.

Failure to comply with this amended Order may result in the issuance of civil penalties or other actions whether administrative or judicial, to enforce the terms of this amended 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. 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 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 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://eluh0.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

Contact Information

Please direct all questions about this Order to:

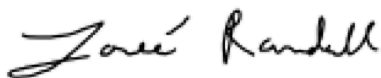
Lori White
Department of Ecology
(509) 424-2887
lori.white@ecy.wa.gov

More Information

- **Pollution Control Hearings Board Website**
<https://eluh0.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>

Signature

Dated this 12th day of March 2024 at the Department of Ecology, Lacey, Washington.



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

This document shows the conditions that have been amended since the original Order was issued. Therefore, it is not the official certification and should only be used for informational purposes.

**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, First Amendment
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.

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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.

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- 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.~~
 2. Pahlisch Commercial (Kathryn Joseph, Pahlisch Commercial) shall obtain a Statement of Sale from the Sponsor as documentation of purchase of 21.024 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.