



STATE OF WASHINGTON  
**DEPARTMENT OF ECOLOGY**

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

October 22, 2024

WZL Enterprises LLC  
Attn: Marc Wislen  
4412 Russell Road, Unit B  
Mukilteo, WA 98275

Re: Water Quality Certification Order No. **22400** (Corps No. **NWS-2022-0712**), Ash Way Townhomes, Snohomish County, Washington

Dear Marc Wislen:

On October 27, 2023, WZL Enterprises LLC (Marc Wislen) submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Ash Way Townhomes, 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 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. The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

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

Aquatics ID No. 142080, Corps No. NWS-2022-0712

October 22, 2024

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Enclosure (1)

By certified mail: 9171 9690 0935 0233 1419 42

Sent via e-mail: [rrgregg@comcast.net](mailto:rrgregg@comcast.net)

E-cc: Mae Ancheta, U.S. Army Corps of Engineers

Kenny Booth, Facet

Doug Gresham, Ecology

Erin Hanlon Brown, Ecology

[ECYREFEDPERMITS@ecy.wa.gov](mailto:ECYREFEDPERMITS@ecy.wa.gov)

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

WZL Enterprises LLC  
Attn: Marc Wislen  
4412 Russell Road, Unit B  
Mukilteo, WA 98275

<b>WQC Order No.</b>	22400
<b>Corps Reference No.</b>	NWS-2022-0712
<b>Site Location</b>	Ash Way Townhomes located within Wetlands, Lynnwood, Snohomish County, Washington.

WZL Enterprises LLC (Marc Wislen) submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Ash Way Townhomes, Snohomish County, Washington. The required processing dates are listed below:

- On 9/30/2022, the WZL Enterprises LLC (Marc Wislen) submitted a pre-filing meeting request.
- On 7/18/2023, 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 (NWP) Program.
- On 10/27/2023, Ecology received a request for a Clean Water Section 401 Water Quality Certification.
- On 10/31/2023, WZL Enterprises LLC (Marc Wislen) submitted additional information, and the Department of Ecology (Ecology) considered the Request valid on this date.
- On 11/7/2023, Ecology issued a public notice for the project.
- Ecology's "Reasonable Period of Time" for this project has been established as 10/25/2024.

The proposed development involves constructing 32 townhomes, 66 parking stalls located in garages for each unit, recreation areas (garden space and a playground), pedestrian walkways, patios, and two vehicular access points from Madison Avenue. This will cause: 14,806 ft<sup>2</sup> of direct wetland impacts and 2,615 ft<sup>2</sup> of indirect impacts from encroachment into wetland buffers. Compensatory mitigation includes purchase of 0.3579 credits from the Keller Farm Mitigation Bank for direct and indirect wetland impacts.

The project site is located at 15200 Ash Way, Wetlands, Lynnwood, Snohomish County, Washington, Section 2, Township 27 N., Range 4 E., within Water Resource Inventory Area (WRIA) 8 – Cedar-Sammamish.

With this WQC Order, Ecology is granting with conditions WZL Enterprises LLC (Marc Wislen) request for a Section 401 Water Quality Certification for the Ash Way Townhomes project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on 10/27/2023, and the following supporting documentation:

1. Mitigation Bank Use Plan dated 3/25/2024, submitted to Ecology via email on 5/20/2024.

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, WZL Enterprises LLC (Marc Wislen) 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 WZL Enterprises LLC (Marc Wislen) 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 WZL Enterprises LLC (Marc Wislen) from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

**Special Conditions:**

1. 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. 22400 will remain valid until October 31, 2027.
  - Justification – Certifications are required for any license or permit that authorizes an activity that may result in a discharge or fill material into waters. This WQC Order is not valid until the Federal agency issues a permit. Additionally, Ecology needs to be able to specify how long the WQC Order will be in effect.
  - Citation – Chapter 90.48 RCW, Chapter 173-201A WAC, and WAC 173-225-010.
2. WZL Enterprises LLC (Marc Wislen) shall send a copy of the final Federal permit via e-mail to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to Federal Permit Manager prior to the starting of any work authorized by this WQC Order. If the Federal Agency determines the proposed project does not require a Federal permit, the Project Proponent shall immediately inform Ecology.

- Justification - This condition is needed to ensure that the federal permit has been issued and all the conditions of the WQC Order have been included into the federal permit.
  - Citation - 40 CFR 121.10, 40 CFR 121.11, and Chapter 90.48 RCW.
3. To transfer this WQC Order to a new owner or operator WZL Enterprises LLC (Marc Wislen) shall:
- a. Complete a Request for Transfer of Order with a specific transfer date of the WQC Order's obligations, coverage, and liability and submit it to Ecology at [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to Federal Permit Manager. Link to form: <https://apps.ecology.wa.gov/publications/SummaryPages/ECY070695.html>;
  - b. Provide a copy of this WQC Order to the new owner or operator; and
  - c. The transfer is not considered valid until the Project Proponent receives written notification from Ecology that the transfer has been approved.
    - Justification – Ecology has independent state authority to ensure protection of state water quality. Ecology needs to ensure that anyone conducting work at the project, including any new owners or operators, are aware of and understand the required conditions of this WQC Order to ensure compliance with the water quality standards and other applicable state laws.
    - Citation – 40 CFR 121.5, Chapter 90.48 RCW, RCW 90.48.030, Chapter 173-201A WAC, and WAC 173-225-010.
4. Any work that causes distressed or dying fish or discharges of oil, fuel, or other chemicals into state waters or onto land with a potential for entry into state waters is prohibited. If such work, conditions, or discharges occur, immediately notify Ecology's Regional Spill Response Office at 360-407-6300 and the Washington State Department of Fish & Wildlife with the nature and details of the problem, any actions taken to correct the problem, and any proposed changes in operation to prevent further problems. You will also need to notify the Washington Emergency Management Division at 1-800-258-5990, for spills to water only. This condition is necessary to prevent oil and other hazardous materials spills from causing environmental damage and to ensure compliance with water quality requirements. The sooner a spill is reported, the quicker it can be addressed, resulting in less harm.

- Justification - This condition is necessary to prevent oil and hazardous materials spills from causing environmental damage and to ensure compliance with water quality requirements. The sooner a spill is reported, the quicker it can be addressed, resulting in less harm. 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 - Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.080, Chapter 90.56 RCW, RCW 90.56.280, Chapter 173-201A WAC, WAC 173-201A-300 - 330, WAC 173-204-120, WAC 173-225-010, and WAC 173-303-145.
5. WZL Enterprises LLC (Marc Wislen) shall mitigate wetland impacts as described in the Wetland Mitigation Bank Use Plan for Ash Way Townhomes, prepared by DCG Watershed, dated 3/25/2024, or as required by this 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.
6. WZL Enterprises LLC (Marc Wislen) shall submit to Ecology documentation from the bank sponsor verifying the purchase of 0.3579 wetland mitigation bank credits (credits) from the Keller Farm 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, 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.
7. Unless otherwise authorized by this WQC Order, WZL Enterprises LLC (Marc Wislen) shall complete the purchase of credits before impacting wetlands. Otherwise, Ecology may require WZL Enterprises LLC (Marc Wislen) 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.
8. 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 –Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.080, RCW 90.48.260, Chapter 173-201A WAC, WAC 173-201A-300 - 330, WAC 173-204-120, 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 to WZL Enterprises LLC (Marc Wislen) for the Ash Way Townhomes project.

## 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, 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.

## 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](mailto: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:

Doug Gresham  
Department of Ecology  
(425) 429-1846  
[Doug.Gresham@ecy.wa.gov](mailto: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 22 day of October 2024 at the Department of Ecology, Shoreline Washington.



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