



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

December 19, 2024

Washington Department of Transportation
ATTN: Ruth Park
15700 Dayton Ave N
Seattle, WA 98133

Re: Water Quality Certification Order No. **23379** (Corps No. NWS-2024-0372-DOT), SR 104 Lyon Creek Fish Passage, King County, Washington

Dear Ruth Park:

On September 18, 2024, the Washington Department of Transportation submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the SR 104 Lyon Creek Fish Passage project in King County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies with conditions 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 Penny Kelley at 360-280-8856. The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

Brenden McFarland, Section Manager
Environmental Review & Transportation Section
Shorelands and Environmental Assistance Program

WQC Order No. 23379, Corps No. NWS-2024-0372-DOT
Aquatics ID No. 140022
December 19, 2024
Page 2 of 2

Enclosure (1)

By certified mail: 9489 0090 0027 6391 8523 47

Sent via e-mail: ruth.park@wsdot.wa.gov

E-cc: Samantha Standford, U.S. Army Corps of Engineers
Martin Fox, Muckleshoot Indian Tribe, Fisheries Division
Brandon Stevens, WSDOT
Erin Hanlon Brown, Ecology
Caroline Corcoran, Ecology
Penny Kelley, Ecology
ecyrefedpermits@ecy.wa.gov

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

Washington Department of Transportation
Attn: Ruth Park
15700 Dayton Ave N
Seattle, WA 98133

WQC Order No.	23379
Corps Reference No.	NWS-2024-0372-DOT
Site Location	SR 104 Lyon Creek Fish Passage located within Lyon Creek, Lake Forest Park, King County, Washington.

The Washington Department of Transportation submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the SR 104 Lyon Creek Fish Passage in King County, Washington. The required processing dates are listed below:

- On 1/12/2021, the Washington Department of Transportation submitted a pre-filing meeting request.
- On 8/29/2024 the U.S. Army Corps of Engineers (Corps) sent an email notification to Ecology that they are reviewing the project for authorization under the Nationwide Permit (NWP) Program.
- On 9/18/2024, Ecology received a request for Clean Water Section 401 Water Quality Certification.
- On 10/31/2024, Ecology issued a public notice for the project.
- Ecology's "Reasonable Period of Time" for this project has been established as 3/17/2025.

This project proposes to remove and replace an existing culvert with a new 24'-span arch structure that is fish passable. The stream channel would be realigned ~10' west of the current location allowing for better constructability and stream meandering. The section of abandoned channel will be filled and the existing 114' long, 48' diameter concrete box culvert will be removed. Large woody material will be added to the new stream channel creating better aquatic habitat and the banks will be planted with native plant species. In addition to the culvert and new stream channel, WSDOT will conduct work on an adjacent parcel, including excavating, testing, and properly disposing any soil and groundwater (as a result of dewatering activities) determined to be contaminated when removing a culvert and underground storage

tanks from a formerly a working gas station. Any contaminated soil removed from this site will be replaced with clean material.

The project site is located on SR 104 between milepost 31.15 and milepost 31.30, Lyon Creek, in King County, Washington, Section 9, Township 26 N., Range 4 E., within Water Resource Inventory Area (WRIA) 8, Cedar-Sammamish.

With this WQC Order, Ecology is granting with conditions the Washington Department of Transportation's request for a Section 401 Water Quality Certification for the SR 104 Lyon Creek Fish Passage project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on 9/18/2024.

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, the Washington Department of Transportation 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 the Washington Department of Transportation 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 Washington Department of Transportation 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. **23379** will remain valid until September 30, 2028.
 - 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. The Washington Department of Transportation shall send a copy of the final Federal permit via e-mail to 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 Washington Department of Transportation 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. The Washington Department of Transportation shall implement the approved water quality monitoring and protection plan, *In-Water Work Water Quality Monitoring Protection Plan, SR 104 Lyon Creek – Fish Passage* dated November 19, 2024.
- Justification – This condition is necessary to ensure that the monitoring and BMPs that are proposed by the Project Proponent and authorized by Ecology are conducted to protect water quality. 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 173-201A WAC, WAC 173-201A-300 – 330, WAC 173-204-120, and WAC 173-225-010.
4. The Washington Department of Transportation shall comply with the conditions of the Construction Stormwater General Permit (National Pollutant Discharge Elimination System – NPDES) and companion Administrative Order No. 23179.
- Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality protect aquatic life and beneficial uses.
 - Citation – Chapter 90.48 RCW, RCW 90.494.030, 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.
5. 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.

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 Washington Department of Transportation for the SR 104 Lyon Creek Fish Passage 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 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://eluh.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 360-407-6831 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:

Penny Kelley
Department of Ecology
360-280-8856
penny.kelley@ecy.wa.gov

More Information

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

Signature

Dated this 19th day of December 2024, at the Department of Ecology, Lacey, Washington.



Brenden McFarland, Section Manager
Environmental Review & Transportation Section
Shorelands and Environmental Assistance Program