



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

*Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000
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November 17, 2020

Bridgette Glass
Washington Department of Fish and Wildlife
600 Capitol Way
Olympia, WA 98501

RE: Water Quality Certification Order No. 18189 for Corps Public Notice No. NWS-2020-157,
Samish River Unit Parking Lot, Skagit County, Washington

Dear Bridgette Glass:

On February 13, 2020, the Washington Department of Fish and Wildlife submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Samish River Unit Parking Lot, Skagit County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the Joint Aquatic Resource Permit Application (JARPA) and the public notice 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 conditions contained in the enclosed Order.

Please ensure that anyone doing work under this Order has read, is familiar with, and is able to follow all of the provisions within the attached Order.

If you have any questions, please contact Doug Gresham at (425) 429-1846. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Burcar", is written over a horizontal line.

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

Enclosure

e-cc: Pam Sanguinetti, Corps of Engineers
Loree' Randall, Ecology
Rebekah Padgett, Ecology
ECY RE FEDPERMITS

IN THE MATTER OF GRANTING A) ORDER # 18189
WATER QUALITY) Corps Reference No. NWS-2020-157
CERTIFICATION TO) Samish River Unit Parking Lot, Skagit County,
Washington Department of Fish and) Washington.
Wildlife)
in accordance with 33 U.S.C. 1341)
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC

Washington Department of Fish and Wildlife
Attn: Bridgette Glass
600 Capitol Way
Olympia, WA 98501

On February 13, 2020, the Department of Ecology (Ecology) received a request from Washington Department of Fish and Wildlife for a Section 401 Water Quality Certification (WQC) to authorize wetland impacts associated with construction of a parking lot at the Samish River Unit. The U.S. Army Corps of Engineers (Corps) issued a joint public notice for the project on June 2, 2020.

The proposed project entails construction of a parking lot and entrance ramp from Bayview Edison Road to the Samish River Wildlife Unit. This project includes 0.41-acre of direct wetland impacts that will be compensated by creating 0.82-acre of wetlands on the adjacent Samish Unit. The parking lot site is located near 6496 Bayview Edison Road, and the mitigation site is located near 12561 Samish Island Road, within Section 5, Township 35N, Range 3E, Water Resource Inventory Area (WRIA) No. 3, Samish River watershed.

AUTHORITIES

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306, and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and,
3. Conformance with the provision of using all known, available, and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will comply with applicable water quality standards and other appropriate requirements of state law. 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, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Washington Department of Fish and Wildlife 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 certification absolves Washington Department of Fish and Wildlife from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

A. General Conditions

1. In this Order, the term “Applicant” shall mean the Washington Department of Fish and Wildlife and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to Ecology’s Northwest Regional Office, Attn: 401/CZM Federal Permit Manager, Shorelands and Environmental Assistance Program, 3190 160th Avenue SE, Bellevue, WA 98008, OR via email to fednotification@ecy.wa.gov and cc: doug.gresham@ecy.wa.gov. The submittals shall be identified with Order 18189 and include the Applicant name, project name, project contact, and the contact phone number.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Permit Application (JARPA) received by Ecology on February 13, 2020.
4. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that might significantly and adversely affect water quality, other than those project changes required by this Order.
5. Within 30 days of receipt of any updated information, Ecology will determine if the revised project requires a new public notice and Water Quality Certification or if a modification to this Order is required.
6. This Order is not effective until the U.S. Army Corps of Engineers (Corps) issues a permit for this project.

7. The Applicant shall send (per A.2) a copy of the final Corps permit to Ecology's Federal Permit Manager within two weeks of receiving it.
8. The Applicant shall keep copies of this Order on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
9. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, and/or necessary data collection, to ensure that conditions of this Order are being met.
10. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that 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 water quality.
11. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48) or the federal Clean Water Act, Ecology may issue an amendment to this Order to incorporate any such changes or amendments applicable to this project.
12. The Applicant shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work 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 signatory that s/he has read and understands the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins.
13. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
14. Failure of any person or entity to comply with the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

B. Notification Requirements

1. The following notification shall be made via phone or e-mail (e-mail is preferred) to Ecology's Federal Permit Manager via e-mail to fednotification@ecy.wa.gov and cc to

doug.gresham@ecy.wa.gov. Notifications shall be identified with Order No. 18189 and include the Applicant name, project name, project location, project contact and the contact phone number.

- a. Immediately following a violation of state water quality standards or when the project is out of compliance with any of this Orders conditions.
 - b. At least ten (10) days prior to all pre-construction meetings
 - c. At least ten (10) days prior to conducting initial in-water work activities for each in-water work window.
 - d. At least seven (7) days prior to completing each wetland mitigation site.
 - e. At least seven (7) days within project completion.
2. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction and mitigation are completed.

C. Timing

1. This Order will expire when all its conditions have been met and upon receipt of a mitigation closeout letter from Ecology.

D. Construction

General Conditions

1. The Applicant shall obtain and comply with the conditions of the Construction Stormwater Permit (National Pollutant Discharge Elimination System – NPDES) issued for this project.
2. Within the project limits all environmentally sensitive areas including, but not limited to, wetlands, wetland buffers, and mitigation areas shall be fenced with high visibility construction (HVF) prior to commencing construction activities. Construction activities include equipment staging, materials storage, and work vehicle parking.
3. Construction stormwater, sediment, and erosion control best management practices (BMPs) suitable to prevent exceedances of state water quality standards shall be in place before starting clearing, grading, and fill work, and shall be maintained throughout construction.
4. All clearing limits, stockpiles, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities and maintained until all work is completed for each project.

5. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
6. All construction debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.

Equipment & Maintenance

7. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state including wetlands. If a staging area must be located within 50 feet of waters of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Permit Manager before placing the staging area in the 50-foot setback area.
8. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its use around waters of the state, including wetlands.
9. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
10. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
11. Wash water containing oils, grease, or other hazardous materials resulting from washing of equipment or working areas shall not be discharged into state waters. The Applicant shall set up a designated area for washing down equipment.

E. Wetland Compensatory Mitigation Conditions

1. The Applicant shall mitigate wetland impacts as described in the *Samish River Unit Parking Lot—Final Mitigation Plan* (hereafter called the Mitigation Plan) prepared by Washington Department of Fish and Wildlife, and dated October 22, 2020, or as modified by this Order or revised and approved by Ecology.
2. The Applicant shall submit any proposed changes to the Mitigation Plan in writing to Ecology (see A2) for review and approval before implementing the changes.
3. The Applicant shall have a qualified wetland professional at the wetland mitigation site to supervise during construction and planting.

4. If the wetland mitigation site cannot be completed within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of:

1. Samish River Unit Parking Lot project.
2. Construction of the off-site mitigation.

With the:

3. Reason for the delay.
4. Expected date of completion.

The Applicant shall submit an updated written notification every 12 months thereafter until the Samish River Unit Parking Lot wetland mitigation site is completed.

5. The Applicant shall ensure all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers and landward of the 100-year floodplain, unless otherwise provided for in the Mitigation Plan.
6. The Applicant shall ensure no construction debris is deposited within existing wetlands or their buffers at the wetland mitigation site at any time, unless otherwise provided for in the Mitigation Plan.
7. The Applicant shall not use polyacrylamide at the mitigation site.
8. The Applicant shall not use hay or straw on exposed or disturbed soil at the mitigation site, unless otherwise approved by Ecology.
9. Aquatic herbicides can be used or applied only by certified applicators or persons under the direct supervision of a certified applicator, and only for those uses covered by the certified applicator's license category.
 - a. Applicators are required to be permitted under Ecology's Noxious Weed Control Permit.
 - b. Applicators shall comply with all conditions of the Noxious Weed Control Permit.
10. If seeding is used for temporary erosion control, it must be a seed mix consisting of native, annual, non-invasive plant species, unless otherwise approved by Ecology.
11. If solid or mesh plant protector tubes are used on the mitigation sites, Ecology strongly recommends the Applicant use fully biodegradable options. If non-biodegradable plant protection options are used, they shall be removed before they interfere with plant growth or before the end of the monitoring period, whichever comes first.

Monitoring and Maintenance

12. After completing construction and planting of the mitigation site, the Applicant shall submit to Ecology (see A2) an as-built report, including plan sheets documenting site conditions at Year Zero:

- a. An electronic file shall be submitted within 90 days of completing construction and planting.
 - b. Include the information listed in Attachment B (Information Required for As-built Reports).
 - c. Include documentation of the recorded legal mechanism required in Condition E13.
13. The Applicant shall provide Ecology with documentation of a recorded deed notification for the off-site mitigation area. The Applicant shall:
 - a. Send the notice on deed to Ecology for review and approval.
 - b. The Ecology-approved notice on deed should be recorded with the Skagit County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.
 - c. The notice on deed should include a legal description showing the area that is being protected, a copy of this Order, and a site map showing the location of wetland and its buffers that are being protected.
 - d. Provide a copy of the recorded notice on deed to Ecology with the As-Built Report (see condition E12), unless otherwise approved by Ecology.
14. The Applicant shall maintain all plantings so as to meet the Mitigation Plan's performance standards.
15. The Applicant shall monitor the mitigation for a minimum of 5 years documenting conditions for years 1, 2, 3, and 5.

F. Emergency/Contingency Measures

1. The Applicant shall develop and implement a spill prevention and containment plan for this project.
2. The Applicant shall have adequate and appropriate spill cleanup material available on site at all times during construction.
3. The Applicant shall have adequate and appropriate spill response materials available on site to respond to any release of petroleum products or any other material into waters of the state.
4. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
5. Work causing distressed or dying fish and discharges of oil, fuel, or chemicals into state waters or onto land with a potential for entry into state waters is prohibited. If such work,

conditions, or discharges occur, the Applicant shall notify Ecology's Federal Permit Manager per condition B.1. and immediately take the following actions:

- a. Cease operations at the location of the non-compliance.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and prevent further environmental damage.
 - c. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - d. Immediately notify Ecology's Regional Spill Response Office 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.
 - e. Immediately notify the National Response Center at 1-800-424-8802, for actual spills to water only.
6. Notify Ecology's Regional Spill Response Office immediately if chemical containers (e.g. drums) are discovered on-site or any conditions present indicating disposal or burial of chemicals on-site that may impact surface water or ground water.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing 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 both 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

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503 Pollution Control Hearings Board 1111 Israel Road SW STE 301 Tumwater, WA 98501	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608 Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

Doug Gresham
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
(425) 429-1846
Doug.Gresham@ecy.wa.gov

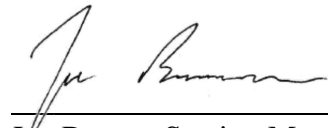
MORE INFORMATION

- **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>

SIGNATURE

Dated this 17th day of November 2020, at the Department of Ecology, Bellevue Washington.



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

Attachment A
Statement of Understanding
Water Quality Certification Conditions

Samish River Unit Parking Lot
Water Quality Certification Order No. 18189
and
Corps Reference No. NWS-2020-157

I, _____, state that I will be involved as an agent or contractor for the Washington Department of Fish and Wildlife during site preparation and/or construction of the Samish River Unit Parking Lot located in Skagit County, Washington. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order No. 18189 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

I have and will continue to ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand the conditions of this Order and any permits, plans, documents, and approvals referenced in the Order.

Signature

Date

Title

Phone

Company

Attachment B

Information Required for As-built Reports

Samish River Unit Parking Lot Project
Water Quality Certification Order # 18189
and
Corps Reference # NWS-2020-157

Ecology requires the following information for as-built reports submitted under this Order. Ecology will accept additional information that may be required by other agencies.

Background Information

- 1) Project name.
- 2) Ecology Order number and the Corps reference number.
- 3) Name and contact information of the person preparing the as-built report. Also, if different from the person preparing the report, include the names of:
 - a) The applicant
 - b) The landowner
 - c) Wetland professional on site during construction of the mitigation site(s).
- 4) Date the report was produced.

Mitigation Project Information

- 5) Brief description of the **final** mitigation project with any changes from the approved plan made during construction. Include:
 - a) **Actual** acreage of Cowardin classes and mitigation type(s) (re-establishment, rehabilitation, creation, enhancement, preservation, upland, buffers).
 - b) Important dates, including:
 - i. Start of project construction.
 - ii. When work on the mitigation site began and ended.
 - iii. When different activities such as grading, removal of invasive plants, installing plants, and installing habitat features began and ended.
- 6) Description of any problems encountered and solutions implemented (with reasons for changes) during construction of the mitigation site(s).
- 7) List of any follow-up actions needed, with a schedule.
- 8) Vicinity map showing the geographic location of the site(s) with landmarks.
- 9) Mitigation site map(s), 8-1/2" x 11" or larger, showing the following:
 - a) Boundary of the site(s).
 - b) Topography (with a description of how elevations were determined).
 - c) Installed planting scheme (quantities, densities, sizes, and approximate locations of plants, as well as the source(s) of plant material).
 - d) Location of habitat features.
 - e) Location of permanent photo stations and any other photos taken.Include the month and year when each map was produced or revised. The site map(s) should reflect on-the-ground conditions after the site work is completed.
- 10) Photographs taken at permanent photo stations and other photographs, as needed. Photos must be dated and clearly indicate the direction from which each photo was taken. Photo pans are recommended.
- 11) A copy of any deed notifications, conservation easements, or other approved site protection mechanism.

Attachment D

Information Required for Monitoring Reports

Samish River Unit Parking Project
Water Quality Certification Order # 18189
and
Corps Reference # NWS-2020-157

Ecology requires the following information for monitoring reports submitted under this Order. Ecology will accept additional information that may be required by other agencies.

Background Information

- 1) Project name.
- 2) Ecology Order number and the Corps reference number.
- 3) Name and contact information of the person preparing the monitoring report. Also, if different from the person preparing the report, include the names of:
 - a) The applicant
 - b) The landowner
 - c) The party responsible for the monitoring activities.
- 4) Dates the monitoring data were collected.
- 5) Date the report was produced.

Mitigation Project Information

- 6) Brief description of the mitigation project, including acreage of Cowardin classes and mitigation type(s) (re-establishment, rehabilitation, creation, enhancement, preservation, upland, buffers).
- 7) Description of the monitoring approach and methods. For each performance standard being measured provide the following information:
 - a) Description of the sampling technique (e.g., monitoring point for soil or hydrology, line or point intercept method, ocular estimates in individually placed plots). If you are using a standardized technique, provide a reference for that method.
 - b) Size and shape of plots or transects.
 - c) Number of sampling locations and how you determined the number of sampling locations to use.
 - d) Percent of the mitigation area being sampled.
 - e) Locations of sampling (provide a map showing the locations), how you determined where to place the sampling locations (e.g., simple random sample), and whether they are permanent or temporary.
 - f) Schedule for sampling (how often and when).
 - g) Description of how the data was evaluated and analyzed.
- 8) Summary table(s) comparing performance standards with monitoring results and whether each standard has been met.

- 9) Discussion of how the monitoring data were used to determine whether the site(s) is meeting performance standards.
 - 10) Goals and objectives and a discussion of whether the project is progressing toward achieving them.
 - 11) Summary, including dates, of management actions implemented at the site(s), for example, maintenance and corrective actions.
 - 12) Summary of any difficulties or significant events that occurred on the site that may affect the success of the project.
 - 13) Specific recommendations for additional maintenance or corrective actions with a timetable.
 - 14) Photographs taken at permanent photo stations and other photographs, as needed. Photos must be dated and clearly indicate the direction the camera is facing. Photo pans are recommended.
 - 15) Vicinity map showing the geographic location of the site(s) with landmarks.
 - 16) Mitigation site map(s), 8-1/2" x 11" or larger, showing the following:
 - a) Boundary of the site(s).
 - b) Location of permanent photo stations and any other photos taken.
 - c) Data sampling locations, such as points, plots, or transects.
 - d) Approximate locations of any replanted vegetation.
 - e) Changes to site conditions since the last report, such as areas of regrading, a shift in the location of Cowardin classes or habitat features, or a change in water regime.
- Include the month and year when each map was produced or revised. The site map(s) should reflect on-the-ground conditions during the most recent monitoring year.