



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
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January 31, 2014

Lisa Cavell
Creekstone Development, LLC
11100 Main St, Suite 100
Bellevue, WA 98004

RE: Water Quality Certification Order #10468 for U.S. Army Corps of Engineers Public
Notice #NWS-2012-1276, Creekstone-169th St SE Improvements Project,
in Snohomish County, Washington

Dear Ms. Cavell:

April 3, 2013, Creekstone Development, LLC submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed Creekstone-169th St SE Improvements project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA, revised mitigation plan and addendum 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.

If you have any questions, please contact Paul S. Anderson at (425) 649-7148. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Erik Stockdale, Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

ES:psa
Enclosure

By certified mail 7011 0470 0003 3720 7851

e-cc: Olivia Romano, U.S. Army Corps of Engineers
ecyrefedpermits@ecy.wa.gov
Loree' Randall - Ecology, HQ SEA
Raman Iyer, Ecology NWRO WQ
Paul S. Anderson, Ecology NWRO SEA

George Newman, Barghausen Consulting Engineers, Inc.
Karen Walter, Muckleshoot Indian Tribe



IN THE MATTER OF GRANTING A)	ORDER #10468
WATER QUALITY)	Corps Reference #NWS-2012-1276
CERTIFICATION TO)	Creekstone-169 th St SE Improvements Project;
CREEKSTONE DEVELOPMENT,)	Wetlands, Snohomish County, Washington.
LLC)	
in accordance with 33 U.S.C. 1341)	
(FWPCA § 401), RCW 90.48.120, RCW)	
90.48.260 and Chapter 173-201A WAC)	

TO: Creekstone Development, LLC
 Attn: Lisa Cavell
 11100 Main St, Suite 100
 Bellevue, WA 98004

On April 3, 2013, Creekstone Development, LLC submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on December 16, 2013.

The proposal is to fill approximately 2,389 square feet (0.05 acre) of jurisdictional wetlands along Tambark Creek on the south side of 169th St SE for road widening improvements. The improvements to 169th St SE are associated with development of a residential subdivision.

The project includes the replacement of the existing planter strip along 169th St SE with a sidewalk and cast-in-place concrete wall along the sidewalk edge adjacent to wetlands.

The project is located on the south side of 169th St SE between 35th Ave SE and 40th Ave SE, Snohomish County, Washington, Section 9, Township 27 N, Range 5E, WRIA 8.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined 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 meet the 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 Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

- A1. For purposes of this Order, the term "Applicant" shall mean Creekstone Development, LLC and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: Paul S. Anderson, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #10468 and Corps Reference #NWS-2012-1276.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on April 3, 2013 and the revised mitigation plan (dated August 5, 2013) and addendum (dated December 11, 2013) received by Ecology on December 11, 2013. This Order is limited to the 0.05 acre wetland impact associated with the 169th St SE improvements described in the JARPA and the mitigation described in the revised mitigation plan and addendum. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA and referenced mitigation proposals are voided by subsequent changes to the project not authorized by this Order.
- A4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.

- A5. Copies of this Order shall be kept 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.
- A6. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A7. 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.
- A8. The Applicant shall ensure that all appropriate project engineers and contractors at the project site 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 project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project or mitigation sites.
- A9. 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.
- A10. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

B. Wetland Conditions:

- B1. Except as modified by this Order, the wetland and buffer enhancement areas depicted on Sheets 1 and 2 of the *Compensatory Wetland Mitigation Plan for Creekstone-169th Street SE Improvements, Revision #1: August 5, 2013* (Revised Mitigation Plan) and Sheet 2 of 2 included with the December 11, 2013 mitigation addendum, both received on December 11, 2013. The project shall meet the performance standards listed on pages 13-14 of the Revised Mitigation Plan.
- B2. The Applicant shall submit any changes to the Mitigation Plan in writing to Ecology (see A.2) for review and approval before work begins.

- B3. The Applicant shall get review and written approval from Ecology of any plan changes required if problems arise during construction and planting of the wetland mitigation site.
- B4. The Applicant shall have a wetland professional at the wetland mitigation site to supervise during construction and planting.
- B5. The Applicant shall ensure that all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers at the wetland mitigation site and above the 100-year floodplain.
- B6. The Applicant shall ensure that no material is stockpiled within existing wetlands and their buffers at the wetland mitigation site(s) at any time, unless provided for in the Ecology-approved Mitigation Plan.
- B7. The Applicant shall ensure that no construction debris is deposited within existing wetland and their buffers at the wetland mitigation site(s) at any time, unless provided for in the Ecology approved Mitigation Plan.
- B8. The Applicant shall not use polyacrylamide on exposed or disturbed soil at the mitigation site(s).
- B9. The Applicant shall not use hay or straw on exposed or disturbed soil at the mitigation site(s).
- B10. 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. Applicators are required to be permitted under Ecology's Noxious Weed Control Permit. Applicators shall comply with all conditions of the Noxious Weed Control Permit.
- B11. If weed-barrier fabric is used on the site, the Applicant shall use only permeable, fully biodegradable, non-toxic weed-barrier fabric for entire-site and/or individual plant weed control. Non-biodegradable plastic weed-barrier fabric shall be used only at the base of individual plants and shall be removed before it starts to break down, before it interferes with plant growth, or before the end of the monitoring period, whichever comes first.
- B12. If seeding is used as a best management practice for temporary erosion control, it must be a seed mix consisting of native, annual, non-invasive plant species.
- B13. After completing construction and planting of the mitigation sites(s), the Applicant shall submit to Ecology (see A2) an as-built report, including plan sheets, documenting site conditions at Year Zero. The as-built report must:
 - a. Be submitted within 90 days of completing construction and planting. Include one hard copy and one electronic file.

- 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 B.14.d.
- B14. In addition to conditions in the Mitigation Plan, the following requirements shall be conditions of this Order:
- a. Monitoring: The condition of mitigation plantings shall be recorded in years 1, 3, 5, 7 and 10 after the Year 0 report. Monitoring reports should document plant survival and vigor and include representative photos from permanent locations. Copies of all monitoring reports shall be submitted to Ecology per Condition A2. The monitoring reports must:
 - i. Be submitted by December 31 of each monitoring year. Include one hard copy and one electronic file.
 - ii. Include the information listed in Attachment C (Information Required for Monitoring Reports).
 - b. Maintenance: The Applicant is responsible for maintenance and protection of the mitigation planting areas both throughout and after the 10-year monitoring period. The Applicant shall water and maintain all mitigation site plantings so as to meet the Mitigation Plan's performance standards on pages 13 and 14. If an irrigation system is installed, it shall be removed by the end of year three unless permission is received in writing from Ecology to allow the system to remain for a longer period. All plants that fail to survive for one (1) year after planting shall be replaced before or at the beginning of the next growing season or until the performance standards have been met.
 - c. Contingency Measures: If the Revised Mitigation Plan's goals, objectives, or performance standards are not being met, the Applicant shall implement the Revised Mitigation Plan's contingency measures. Prior to implementing contingency measures not specified in the Revised Mitigation Plan, the Applicant shall consult with and obtain written approval from Ecology for the changes.
 - d. Site Protection: Within 90 days of completing construction and planting of the Creekstone-169th Street SE Improvements wetland mitigation site, the Applicant shall provide documentation to Ecology that all on-site critical areas and associated buffers have been designated as Native Growth Protection Areas and placed in separate tracts for long-term protection.

- e. If the Applicant has not met all conditions, including performance standards for the mitigation site at the end of the monitoring period, Ecology may require additional monitoring, additional mitigation, or both.
- f. Until the Applicant has received written notice from Ecology that the Mitigation Plan has been fully implemented, the Applicant's obligation under Condition D.1 to mitigate for wetland impacts is not met.

C. Conditions for Construction Activities:

- C1. Construction stormwater, sediment, and erosion control best management practices (BMPs; *e.g.*, filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- C2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- C3. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.

D. Emergency/Contingency Measures:

- D1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- D2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- D3. 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.
- D4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
 - a. Cease operations at the location of the violation or spill.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.

- c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
- d. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

E. Timing Requirements

- E1. This Order expires March 19, 2017.

F. Reporting and Notification Requirement Conditions

- F1. Applicant shall provide notice to Ecology's Project Manager:

- At least three (3) days prior to the start of construction and
- Within 14 days after completion of construction at the project site.

Notification, referencing Corps Reference #NWS-2012- 1276, Order #10468 can take place by telephone to (425) 649-7148 or (425) 649-7000, fax to (425) 649-7098, or in writing.

- F2. If the mitigation site(s) cannot be completed within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of
 - a. Creekstone-169th St SE Improvements Project.
 - b. Creekstone-169th St SE Improvements Project wetland mitigation site.With the:
 - c. Reason for the delay.
 - d. Expected date of completion.

The Applicant shall submit per Condition A2 an updated written notification every 12 months thereafter until construction of the Creekstone-169th St SE Improvements Project and wetland mitigation site are complete.

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	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

Paul S. Anderson
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
(425) 649-7148
paan461@ecy.wa.gov

MORE INFORMATION

Pollution Control Hearings Board Website

www.eho.wa.gov/Boards_PCHB.aspx

Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board

<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

Chapter 371-08 WAC – Practice And Procedure

<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

Chapter 90.48 RCW – Water Pollution Control

<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

Chapter 173-204 WAC – Sediment Management Standards

www.ecy.wa.gov/biblio/wac173204.html

Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington

www.ecy.wa.gov/biblio/wac173200.html

Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington

www.ecy.wa.gov/biblio/wac173201A.html

SIGNATURE



Erik Stockdale, Section Manager
Shorelands and Environmental Assistance Program
Northwest Regional Office

1-31-2014

January 31, 2014

ATTACHMENT A

**CREEKSTONE DEVELOPMENT, LLC
CREEKSTONE-169TH ST SE IMPROVEMENTS PROJECT
Water Quality Certification Order #10468, Corps Reference #NWS-2012-1276**

**Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #10468 Section 401 Water Quality Certification for the Creekstone-169th St SE Improvements Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company

ATTACHMENT B

**CREEKSTONE DEVELOPMENT, LLC
CREEKSTONE-169TH ST SE IMPROVEMENTS PROJECT
Water Quality Certification Order #10468, Corps Reference #NWS-2012-1276**

Information Required for As-built Reports

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 C

**CREEKSTONE DEVELOPMENT, LLC
CREEKSTONE-169TH ST SE IMPROVEMENTS PROJECT
Water Quality Certification Order #10468, Corps Reference #NWS-2012-1276**

Information Required for Monitoring Reports

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.