



STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION

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<http://www.wa.gov/transportation> • <http://www.wa.gov/transportation/department>

April 9, 2012

Alan Soicher  
Department of Transportation  
Northwest Region  
P.O. Box 330310  
Seattle, WA 95133-9710

RE: Water Quality Certification Order# 9107 for Corps NWP 23, Ref# NWS-2009-1492 for the SR 9, SR 531/172<sup>nd</sup> Street NE Intersection Improvements in Snohomish County, Washington.

Dear Mr. Soicher:

On April 3, 2012, the Washington Department of Transportation (WSDOT) submitted an updated Joint Aquatic Resources 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 SR 9, SR 531/172<sup>nd</sup> Street NE Intersection Improvements project.

The proposed project entails replacing the existing signalized intersection with a multi-lane roundabout. The existing pavement will be removed and a two lane roundabout with a truck apron width of 10 feet will be constructed. The central island of the roundabout will be planted. In addition to constructing the roundabout, WSDOT will upgrade the illumination and stormwater drainage systems in the project area.

This project will result in 0.55 acre of permanent wetland impacts to wetlands. To mitigate for unavoidable wetland impacts, WSDOT will debit 0.59 wetland credits from the Snohomish Basin Mitigation Bank.

On behalf of the State of Washington, Ecology certifies that the work described in the 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.

Alan Soicher  
April 9, 2012  
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If you have any questions, please contact Penny Kelley at 360-407-7298. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Brenden McFarland, Section Manager  
Headquarters  
Shorelands and Environmental Assistance Program

e-cc: MAP Team  
Liz Kriewald, WSDOT  
Loree' Randall – HQ  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

by Certified Mail 7009 0820 0001 9056 0816

**IN THE MATTER OF GRANTING A ) ORDER # 9107**  
**WATER QUALITY ) Corps Reference No. NWS-2009-1246**  
**CERTIFICATION TO )** Replace the existing signalized intersection with  
Washington Department of ) a multi-lane roundabout in Snohomish County,  
Transportation ) Washington.  
in accordance with 33 U.S.C. 1341 )  
(FWPCA § 401), RCW 90.48.120, RCW )  
90.48.260 and Chapter 173-201A WAC )

TO: Alan Soicher  
Washington Department of Transportation  
P.O. Box 330310  
Seattle, WA 98133-9710

On April 3, 2012 Ecology received an updated Joint Aquatic Resources Permit Application (JARPA) from the Washington Department of Transportation (WSDOT) requesting a 401 Water Quality Certification (WQC). The U.S. Army Corps of Engineers (Corps) originally authorized coverage for this project under a Nationwide Permit #23, NWS-2009-1492 on October 28, 2010, which expired on March 18, 2012. The Corps re-authorized coverage under Nationwide Permit #23, NWS-2009-1246 on March 26, 2012. Ecology issued a public notice for the project on March 29, 2012.

The proposed project entails replacing the existing signalized intersection with a multi-lane roundabout. The existing pavement will be removed and a two lane roundabout with a truck apron width of 10 feet will be constructed. The central island of the roundabout will be planted. In addition to constructing the roundabout, WSDOT will upgrade the illumination and stormwater drainage systems in the project area. This project does have unavoidable, permanent wetland impacts that will be mitigated for at the Snohomish Basin Mitigation Bank.

The project is located on SR 9 between Milepost 25.75 and Milepost 26.30, and on SR 531 from Milepost 9.73 to approximately 650 feet east of the SR 9/SR 531 intersection onto 172<sup>nd</sup> Street NE.

WRIA 7 Snohomish River  
Section 24 T31N R5E  
Section 25 T31N R5E

#### **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 WSDOT 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 WSDOT 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 State Department of Transportation and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to Ecology's Headquarters Office, Attn: Federal Project Coordinator, P.O. Box 47600, Olympia, WA 98504 or via e-mail (preferred), if possible, to the Coordinator assigned to this project. The submittals shall be identified with Order No. 9107 and include the Applicant's name, project name, project location, the project contact and the contact's phone number.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on April 3, 2012, unless otherwise authorized by Ecology.

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 water quality certification and public notice or if a modification to this Order is required.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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. Notification shall be made via phone or e-mail (e-mail is preferred) to Ecology's Federal Project Coordinator. Notifications shall be identified with Order No. 9107 and include the Applicants name, project name, project location, project contact and the contact's phone number.
  - a. At least seven (7) days prior to starting construction

**C. Timing**

1. This Order will expire five (5) years from the date of issuance of the Corps permit.

#### **D. Construction**

1. The Applicant shall comply with the conditions of the current Construction Stormwater Permit (National Pollutant Discharge Elimination System – NPDES) issued for this project.
2. Within the project limits<sup>1</sup> 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. *Note: This condition does not apply to activities such as pre-construction surveying and installing HVF and construction zone signage.*
  - a. All field staff shall be trained to recognize HVF, understand its purpose and properly install it in the appropriate locations.
  - b. HVF shall be maintained until all work is completed for each project or each stage of a staged project.
3. 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.
4. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
5. 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

6. 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 Coordinator before placing the staging area in the setback area.
7. 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.

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<sup>1</sup> Project limits include mitigation sites, staging areas, borrow sources, and other sites developed or used to support project construction.

8. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
9. 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.
10. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters. The Applicant shall set up a designated area for washing down equipment.
11. A separate area shall be set aside, which does not have any possibility of draining to surface waters, for the wash-out of concrete delivery trucks, pumping equipment, and tools.

**E. Wetland Compensatory Mitigation**

1. The Applicant shall mitigate wetland impacts as described in the SR 9/SR 531-172<sup>nd</sup> St NE Intersection Improvements Final Wetland Mitigation Report (hereafter called the "mitigation plan") prepared by WSDOT NW Region Biology, dated February 2012 *or as revised and approved* by Ecology.
2. The Applicant shall obtain and submit registered documentation from the bank sponsor identifying the first permit requiring a minimum of 0.59 credits for the project to Ecology (see A.2). This documentation must be submitted to Ecology (see A.2) within 60 days of the issuance of this certificate or before impacting wetlands. This documentation must be registered at the Snohomish County Auditor's office and must include the permit number, permit issuance date, and the amount of credits required by the permit.
3. The Applicant shall notify Ecology (see A.2) of any changes to the amount of wetland impacts, revision of the mitigation plan, and submittal of new information being registered at the Snohomish County Auditor's office.
4. The Applicant shall complete the purchase of mitigation bank credits before the impacts to wetlands occur or Ecology may require additional compensation to account for additional temporal loss.

**F. Emergency/Contingency Measures**

1. The Applicant shall develop and implement a spill prevention and containment plan for this project and shall have spill cleanup material available on site at all times during construction.

2. Work that is out of compliance with the provision of this Order, conditions causing distressed or dying fish, 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 comply with WSDOT's most current Environmental Compliance Assurance Procedure for Construction Project and Activities, notify the Ecology Project Coordinator per condition B.1.a. 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/or 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 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.
  
3. 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 all 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.

- **Chapter 173.204 Washington Administrative Code (WAC) Sediment Management Standards**  
<http://www.ecy.wa.gov/biblio/wac173204.html>
- **Chapter 173-200 WAC Water Quality Standards for Ground Waters of the State of Washington**  
<http://www.ecy.wa.gov/biblio/wac173200.html>
- **Chapter 173-201A WAC Water Quality Standards for Surface Waters of the State of Washington**  
<http://www.ecy.wa.gov/biblio/wac173201A.html>

**SIGNATURE**



Apr 9, 2012

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

\_\_\_\_\_  
Date

## ADDRESS AND LOCATION INFORMATION

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

## CONTACT INFORMATION

Please direct all questions about this Order to:

Penny Kelley  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98503-7600  
360-407-7298  
pkel461@ecy.wa.gov

## MORE INFORMATION

- **Pollution Control Hearings Board Website**  
[www.eho.wa.gov/Boards\\_PCHB.aspx](http://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 34.05 RCW – Administrative Procedure Act**  
<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Chapter 90.48 RCW – Water Pollution Control**  
<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>