



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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August 5, 2016

City of Lynden
Attn: Mark Sandal
300 4th Street
Lynden, WA 98264

RE: Water Quality Certification Order #13704 for U.S. Army Corps of Engineers Public Notice #NWS-2016-140, Riverview Road Gap Elimination Project; Wetlands, Lynden, Whatcom County, Washington

Dear Mr. Sandal:

On March 21, 2016, you 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 Riverview Road Gap Elimination project.

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.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Joe Burcar, Interim Section Manager
Shorelands and Environmental Assistance Program

JB:rrp:ap

Enclosure

By certified mail: 7005 1820 0000 6707 8865



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August 5, 2016
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Cc: Randel Perry, U.S. Army Corps of Engineers
Joel Ingram, Washington Department of Fish and Wildlife
Ross Widener, Widener and Associates

E-cc: Chad Yunge – Ecology, BFO
Diane Hennessey – Ecology, NWRO
Loree' Randall – Ecology, HQ
Greg Stegman – Ecology, NWRO
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A) ORDER #13704
WATER QUALITY) Corps Reference #NWS-2016-140
CERTIFICATION TO) Riverview Road Gap Elimination Project;
City of Lynden) Wetlands, Lynden, Whatcom County,
in accordance with 33 U.S.C. 1341) Washington.
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)
)

TO: City of Lynden
Attn: Mark Sandal
300 4th Street
Lynden, WA 98264

On March 21, 2016, the City of Lynden submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. The U.S. Army Corps of Engineers (Corps) distributed a joint public notice regarding the request for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on April 1, 2016.

The proposed project includes:

- Constructing a new road bed and paving 900 linear feet of existing gravel road to extend River Road from 6th Street (west side of project) to Hannegan Road (east side).
- Creating a 10-foot wide trail on the south side of the road.
- Constructing a 6-foot wide sidewalk on the north side of the road.
- Improving stormwater management along the road.

The proposed work would result in filling of 0.98 acre of Category III palustrine emergent wetland and 0.16 acre of wetland buffer. Impacts would be mitigated through purchase of credits at the Lummi Nation Wetland and Habitat Mitigation Bank. Temporary wetland and buffer impacts of 0.39 acres of Category III palustrine emergent wetland will be mitigated through on-site re-planting and (where necessary) noxious weed removal.

The project is located at Riverview Road from Hannegan Road to just east of South 6th Street, Lynden, Whatcom County, Washington, Wetland and drains to Nooksack River, SW Section 20, T. 40 N., R. 3E., WRIA 1.

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 because of project construction or operations.

A. General Conditions:

- A1. For purposes of this Order, the term "Applicant" shall mean City of Lynden 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: Section 401/CZM Federal Permit Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #13704 and Corps Reference #NWS-2016-140.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on March 21, 2016. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is 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. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 404 permit.
- A6. The Applicant shall provide to Ecology's Section 401/CZM Federal Permit Manager a copy of the final Corps permit within two weeks of receipt of the permit. A copy shall be submitted per condition A2 above.
- A7. 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.
- A8. 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.
- A9. 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.
- A10. 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.
- A11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state (including wetlands) or related aquatic resources, except as specifically provided for in conditions of this Order.
- A12. 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.

A13. The Applicant shall provide access to the project site and the mitigation site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.

B. Native Planting Conditions:

B1. Except as modified by this Order, temporary wetland, buffer, and upland planting areas depicted on Figure 7 of the JARPA figures prepared by Widener and Associates, dated March 3, 2016, will be restored as described in the *Wetland Mitigation Plan – Riverview Road Gap Elimination, City of Lynden, Washington* dated September 2015 and received by Ecology on March 21, 2016.

B2. Any revisions to the planting components of the JARPA Figure 7, the Mitigation Plan, and the Bank Use Plan shall be submitted to Ecology per Condition A2 for review and approval prior to implementing the change.

C. Wetland Compensatory Mitigation Conditions:

C1. The Applicant shall mitigate wetland and wetland buffer impacts as described in the following documents, hereafter referred to as the “mitigation plan” and the “bank use plan” (respectively) or as revised and approved by Ecology:

a. *Wetland Mitigation Plan – Riverview Road Gap Elimination, City of Lynden, Washington*, prepared by Widener and Associates, dated May 13, 2016, and received by Ecology on March 16, 2016.

b. *Wetland Mitigation Bank Use Plan – Riverview Gap Elimination Project*, prepared by Widener and Associates, dated May 13, 2016, and received by Ecology on March 16, 2016.

C2. The Applicant shall submit any changes to the Mitigation Plan and Bank Use Plan in writing to Ecology (see A2) for review and approval before work begins.

C3. 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.

C4. The Applicant shall have a wetland professional at the wetland mitigation site to supervise during construction and planting.

C5. Prior to impacting wetlands, the Applicant shall submit to Ecology documentation from the bank sponsor verifying the purchase of 1.02 wetland mitigation bank credit (credits) from the Lummi Nation Wetland and Habitat Mitigation Bank for impacts to 0.98 acre of wetland and 0.16 acre of buffer impacts. This documentation must include the permit number, permit issuance date, impact acreage, the amount of credits required by the permit, and date of credit purchase.

- C6. The Applicant shall complete the purchase of credits before the impacts to wetlands occur or Ecology may require additional compensation to account for temporal loss of wetland functions.
- C7. If the credits are not purchased within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of:
- a) Riverview Gap Elimination Project.
 - b) When bank credits will be purchased.
- With the:
- c) Reason for the delay.
 - d) Expected date of completion.

The Applicant shall submit an updated written notification every 12 months thereafter until the Riverview Gap Elimination Project is complete and the required credits are purchased.

Implementation

- C7. Unless otherwise approved by Ecology in writing, the Applicant shall begin the compensatory mitigation project before, or concurrent with, impacting wetlands or Ecology may require additional compensation to account for additional temporal loss of wetland functions.
- C8. If the mitigation site for temporary impacts cannot be completed within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of
- a) Riverview Gap Elimination Project.
 - b) When the mitigation for temporary impacts will be implemented.
- With the:
- c) Reason for the delay.
 - d) Expected date of completion.

The Applicant shall submit an updated written notification every 12 months thereafter until the Riverview Gap Elimination Project is complete and the required credits are purchased.

- C9. 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.
- C10. The Applicant shall ensure that no material is stockpiled within existing wetlands and their buffers or within the drainage ditch flowing to the Nooksack River at any time, unless provided for in the Ecology-approved Mitigation Plan.

- C11. The Applicant shall ensure that no construction debris is deposited within existing wetland and their buffers at the wetland mitigation site at any time, unless provided for in the Ecology approved Mitigation Plan.
- C12. The Applicant shall not use polyacrylamide at the mitigation site(s).
- C13. The Applicant shall not use hay or straw on exposed or disturbed soil at the mitigation site.
- C14. 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.
- C15. 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.
- C16. 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.
- C17. The Applicant shall not use solid or mesh plant protector tubes at the mitigation site unless otherwise approved by Ecology.
- C18. 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).

Monitoring and Maintenance

- C19. The Applicant shall water and maintain all mitigation site plantings to meet the Mitigation Plan's performance standards. 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.

- C20. The Applicant shall monitor the mitigation site for a minimum of five years. The Applicant shall use the monitoring methods described in the Mitigation Plan.
- C21. The Applicant shall submit to Ecology (see A2) monitoring reports documenting mitigation site conditions for years 1, 2, 3, 4 and 5. The monitoring reports must:
 - a) Be submitted by December 31 of each monitoring year. Include one hard copy and one electronic file.
- C22. The Applicant shall implement the Mitigation Plan's contingency measures if the Mitigation Plan's goals, objectives, or performance standards are not being met.
- C23. Prior to implementing contingency measures not specified in the Mitigation Plan, the Applicant shall consult with and obtain written approval from Ecology for the changes.
- C24. When necessary to meet the performance standards, the Applicant shall replace dead or dying plants with the same species, or an appropriate native plant alternative, during the first available planting season and note species, numbers, and approximate locations of all replacement plants in the subsequent monitoring report.
- C25. 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.
- C26. Until the Applicant has received written notice from Ecology that the Mitigation Plan has been fully implemented, the Applicant's obligation under Condition C1 to mitigate for wetland impacts is not met.

D. Water Quality Conditions:

- D1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200(1)(e)(i).

E. Conditions for Construction Activities:

- E1. Applicant shall obtain and comply with a Construction Stormwater General Permit for this project.

- E2. 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.
- E3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- E4. 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.
- E5. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- E6. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- E7. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.
- E8. All manmade debris that has been deposited below the Ordinary High Water Line (OHWL) within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete rubble, metal debris, and other debris in the construction work corridor that have washed into marine areas shall be removed from the project area.
- E9. Removal of native riparian vegetation shall be minimized to the extent practicable.
- E10. Clean Fill Criteria: Applicant shall ensure that fill (soil, sand, or other material) placed for the proposed project does not contain toxic materials in toxic amounts.
- E11. In-water work shall be conducted in the dry.
- E12. Equipment shall be operated from the top of the berm in the sediment collection areas to the extent practicable.

F. Emergency/Contingency Measures:

- F1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- F2. 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.
- F3. 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.
- F4. 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 Section 401/CZM Federal Permit 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.

G. Timing Requirements

- G1. This Order expires five years from the date of issuance of the Corps permit.

H. Reporting and Notification Requirement Conditions

H1. Applicant shall provide notice to Ecology's Section 401/CZM Federal Permit Manager:

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

Notification, referencing Corps Reference #NWS-2016-140, Order #13704 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

H2. 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 is complete or this Order expires.

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.) Email 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:

Rebekah Padgett
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
(425) 649-7129
rebekah.padgett@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

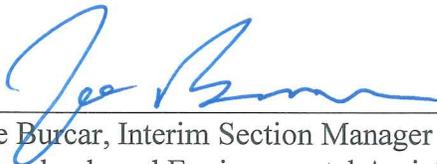
Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington

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



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

8/5/2016

Date

ATTACHMENT A

**CITY OF LYNDEN
RIVERVIEW ROAD GAP ELIMINATION PROJECT
Water Quality Certification Order #13704**

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

I have read and understood the conditions of Order #13704 Section 401 Water Quality Certification for the City of Lynden, Riverview Road Gap Elimination Project. I have also read and understood all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company

Attachment B
Information Required for As-built Reports
(See Condition C17)

CITY OF LYNDEN
RIVERVIEW ROAD GAP ELIMINATION PROJECT
Water Quality Certification Order #13704

Corps Reference #NWS-2016-140

Background Information

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

The Compensatory Mitigation Project

- 5) Brief description of the **final** compensatory mitigation project with any changes from the approved plan made during construction. Include:
 - a) **Actual** acreage and type(s) (re-establishment, rehabilitation, creation, enhancement, and preservation) of mitigation authorized to compensate for wetland impacts.
 - b) Important dates including:
 - i. Start of project construction.
 - ii. When work on the compensatory 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.
- 7) Description of any problems encountered and solutions implemented (with reasons for changes) during construction of the compensatory mitigation site.
- 8) List of any follow-up actions needed, with a schedule.
- 9) Final site maps (8-1/2" x 11" or larger) of the compensatory mitigation site(s), including the following (at a minimum):
 - a) Geographic location of the site with landmarks;
 - b) Clear delineation of the project perimeter(s);
 - c) Topography (with a description of how elevations were determined);

- d) Installed planting scheme (quantities, densities, sizes, and approximate locations of plants, as well as the source(s) of plant material);
- e) Location of habitat features;
- f) Location of permanent photo stations.

The final site maps should reflect on-the-ground conditions after the site work is completed. Include the month and year when the maps were produced and, if applicable, when information was collected.

- 10) Photographs of the site at as-built conditions taken from permanent photo stations. We recommend photo pans.
- 11) Copies of any records of deed notifications or conservation easements.