

IN THE MATTER OF GRANTING A) ORDER # 19483
WATER QUALITY) Corps Reference No. NWS-2020-235-DOT
CERTIFICATION TO) Add capacity and improve Express Toll Lane
WA Department of Transportation) performance on I-405. The project crosses the
in accordance with 33 U.S.C. 1341) Sammamish river and multiple stream in King &
(FWPCA § 401), RCW 90.48.120, RCW) Snohomish Counties, Washington.
90.48.260 and Chapter 173-201A WAC)

Washington Department of Transportation
Attn: Rob Woeck
600 108th Avenue NE Suite 405
Bellevue, WA 98004

On March 5, 2020, the Department of Ecology (Ecology) received a request from the Washington Department of Transportation (WSDOT) for a Section 401 Water Quality Certification (WQC) for I-405, SR 522 Vicinity to SR 527 Express Toll Lanes Improvement Project. The U.S. Army Corps of Engineers (Corps) issued a joint public notice for the project on April 14, 2020.

The proposed project entails providing additional capacity and improving Express Toll Lane (ETL) performance on I-405 between the SR 522 interchange and the SR 527 interchange. Existing lanes and shoulders will be resurfaced, restriped, and in some areas, widened to add one new ETL in each direction. New toll gantries will be installed for the ETLs, retaining walls will be installed in new locations or replaced if needed as well as noise walls. Improvements at each of the interchanges includes new direct access ramps and inline transit stations. Additional interchange elements include new bus station, turnaround loop, and signalized intersection at SR 522 and reconfigured Park and Ride at Canyon Park near SR 527 to include a roundabout and non-motorized improvements. The existing bridges over the Sammamish River will be demolished and replaced with new full span structures. These road improvements require replacing five culverts and constructing new stormwater facilities.

The project will result in unavoidable impacts to existing wetlands and streams. Compensatory mitigation will be provided for wetland impacts and all stream impacts are being mitigated on site by removing fish barrier culverts and improving stream habitat conditions.

The project is located on I-405 starting at mile post 21.79 and ending at mile post 27.06 in King and Snohomish County, Washington.

Section 5, 4, 8, 9 16, 17 T26N R5E
Section 29, 30, 31, 32 T27N R5E
WRIA 8 Cedar-Sammamish

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.
4. Conformance with Washington’s prohibition on discharges that cause or tend to cause pollution of waters of the state of Washington. RCW 90.48.080

WATER QUALITY CERTIFICATION CONDITIONS

With this Certification and 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 the Applicant 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 WSDOT and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to fednotification@ecy.wa.gov and cc to pkel461@ecy.wa.gov. The submittals shall be identified with Order 19483 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 March 5, 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 Corps issues a permit for this project.
7. The Applicant shall send (per condition A.2 above) 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.
15. This Order will automatically transfer to a new owner or operator if:
 - a. A written agreement between the Applicant and new owner or operator with the specific transfer date of the Order's obligations, coverage, and liability is submitted to Ecology per condition A.2.;
 - b. A copy of this Order is provided to the new owner or operator; and
 - c. If Ecology does not notify the new Applicant that this Order must be modified to complete the transfer.
16. Conditions in this Order apply to all planned phases of the construction and the mitigation for this project.

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 pkel461@ecy.wa.gov. Notifications shall be identified with Order No. 19483 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 conditions of this Order.
 - 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 within project completion.
2. In addition to the phone or e-mail notification above, the Applicant shall 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.

C. Timing

1. This Order shall remain in effect for a period of five (5) years from the date of issuance of this certification. Continuing this project beyond the five-year term of this Order will require the Applicant to obtain review and written approval by Ecology to extend the

project for an additional five (5) years. The total term of this Order shall not exceed a total of ten (10) years total.

In-Water Work Window Timing

2. The following in-water work windows shall apply to this project unless otherwise approved by Ecology:
 - a. Sammamish River: July 16 through August 31;
 - b. Parr Creek: July 1 through September 30;
 - c. 25.0L: June 15 through October 15;
 - d. North For Perry Creek: July 1 through September 30
 - e. Queensborough Creek: July 1 through September 30

D. Water Quality Monitoring & Criteria

1. The following waterbodies: Sammamish River, Parr Creek, 25.0L, North Fork Perry Creek, Queensborough Creek are categorized under the Water Quality Standards For Surface Waters of the State of Washington as Salmonid Spawning, Rearing, and Migration and the criteria of the categorization apply as described in WAC 173-201A-200 (1), except as specifically modified by this Order.
2. The Applicant shall submit an updated *Draft Water Quality Monitoring Protection Plan, I405, SR 522 Vicinity to SR 527 Express Toll Lanes Improvement Project* (Plan) prepared by I-405/SR 167 Megaprogram for the Washington Department of Transportation, dated October 2020, to Ecology's Federal Permit Manager (per Condition A.2 of this Order) **for review and approval** at least 30 days prior to beginning any work covered by this Order.
3. The Applicant must provide, in writing, any changes or additions to the Water Quality Monitoring Protection Plan (WQMPP) and obtain approval from Ecology's Federal Permit Manager prior to implementation of the changes or additions.
4. Monitoring results shall be submitted monthly to Ecology's Federal Permit Manager, per condition A.2.
5. Mitigation and/or additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.
6. Visible turbidity anywhere beyond the temporary area of mixing (point of compliance) from the activity shall be considered an exceedance of the standard.

E. 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. 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.
3. No stockpiling or staging of materials shall occur at or below the ordinary high water mark (OHWM) of any waterbody.
4. Within the project limits¹ 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.
5. 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.
6. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
7. 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.
8. Turbid de-watering water associated with in-water work shall not be discharged directly to waters of the state, including wetlands. Turbid de-watering water shall be routed to an upland area for on-site or off-site settling.

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

9. Clean de-watering water associated with in-water work that has been tested and confirmed to meet water quality standards may be discharged directly to waters of the state including wetlands. The discharge outfall method shall be designed and operated so as not to cause erosion or scour in the stream channel, banks, or vegetation.
10. All equipment being used below the OHWM shall utilize biodegradable hydraulic fluid.

Equipment & Maintenance

11. 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.
12. 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.
13. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
14. 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.
15. 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.
16. 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.
17. Barges or temporary floating work platforms shall not be allowed to ground-out during in-water construction.
18. Barges or temporary floating work platforms shall be swept, as necessary, and kept free of material that could be blown into water.

Bridge Construction and Demolition

19. No structural material may enter water of the state during bridge demolition activities.
20. During demolition, structures shall be removed from the banks, existing roads, or from adjacent bridges whenever possible. When necessary, equipment may operate below the OHWM, provided the work is consistent with the project's most recent HPA.
21. The Applicant shall minimize disturbance of vegetation when constructing the temporary work platforms for bridge construction and demolition activities.
22. All forms for concrete shall be completely sealed to prevent the possibility of fresh concrete entering waters of the state.
23. All concrete shall be completely cured prior to coming into contact with water.
24. Concrete process water shall not enter waters of the state. Any concrete process/contact water discharged from a confined area with curing concrete shall be routed to upland areas to be treated and disposed of appropriately with no possible entry to state waters.
25. All saw cut water and debris generated from saw cutting activities that occur above water shall be contained and disposed of appropriately with no possible entry to waters of the state.
26. All excavated sediment shall be disposed upland in an approved disposal site.

Culvert Work & Stream Bypass

27. All culvert work shall be conducted in the dry or in isolation from stream flow.
28. Stream flow isolation work shall not scour the stream channel or banks of the water body in which the work is being done.
29. To minimize sediment releases into downstream water, water reintroduced to the channel shall be done gradually and at a rate not exceeding the normal stream flow.
30. Culverts shall be installed to avoid inlet scouring and prevent downstream bank erosion.
31. Fill associated with culvert installation shall be protected from erosion to the 100-year peak flow.

F. Wetland Compensatory Mitigation

1. The Applicant shall mitigate wetland impacts as described in *I-405, SR 522 Vicinity to SR 527 Express Toll Lanes Improvement Project Wetland and Stream Mitigation Report*

(hereafter called the “mitigation plan”) prepared by I-405/SR 167 Megaprogram, dated November 2020 or as revised and approved by Ecology.

2. Prior to impacting wetlands, the Applicant shall submit to Ecology documentation from the bank sponsor verifying the purchase of credits as specified in the mitigation plan. 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.
3. 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.
4. 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. I-405, SR 522 Vicinity to SR 527 Express Toll Lanes Improvement Project
 - b. When bank credits will be purchased
 - c. Reason for the delay
 - d. Expected date of completion.

The Applicant shall submit an updated written notification every 12 months thereafter until I-405, SR 522 Vicinity to SR 527 Express Toll Lanes Improvement Project is complete and the required credits are purchased.

5. Prior to impacting wetlands, including buffers, associated with the construction of the project, the Applicant shall submit the following to Ecology:
 - a. A ledger showing that the required amount of area has been deducted from the advance wetland mitigation site.
 - b. The ledger must include the Order number, Order issuance date, impact acreage, the amount of area required by the Order, and the date the area was deducted.
6. If the I-405, SR 522 Vicinity to SR 527 Express Toll Lanes Improvement Project has not occurred within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of:
 - a. I-405, SR 522 Vicinity to SR 527 Express Toll Lanes Improvement Project
 - b. Expected date of completion.

The Applicant shall submit an updated written notification every 12 months thereafter until I-405, SR 522 Vicinity to SR 527 Express Toll Lanes Improvement Project is complete and the required ledger has been submitted.

7. The Applicant shall submit any changes to the amount of wetland impacts, or revisions to the mitigation plan, in writing to Ecology for review and approval before work begins.

8. Until the Applicant has received written notice from Ecology that the mitigation plan has been fully implemented, the Applicant's obligation under Condition F.1 to mitigate for wetland impacts is not met.

G. 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	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:

Penny Kelley
Department of Ecology
Headquarters
P.O. Box 47600
360-280-8856
pkel461@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 10th day of December 2020 at the Department of Ecology, Olympia Washington



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