SKANSKA

10/20/2025 Letter No. 258

Evelyn Pao, P.E., Project Director
Washington State Department of Transportation
18911 N Creek Pkwy S, Suite150
Bothell, WA 98011

Project: I-405, Brickyard to SR 527 Improvement Project
Contract No: 009727

Subject: RE: WSDOT SL No. 9727-174, Notice of WSDOT-Initiated Change – Juanita Creek Temporary Stream Diversion & Use of Angular Rock

Dear Ms. Pao:

As a follow up to Skanska's receipt of WSDOT SL No. 9729-174, Skanska believes WSDOT has provided a misapplication of contract design requirements, as well as contradictory and faulty direction to Skanska for the design, installation and removal of the angular rock used in the approved temporary bypass dissipation pad. Please see the attached letter from our Environmental Design Engineer, Atlas Technical Consultants, for a more descriptive explanation of our position that includes the following irrefutable facts:

1. The HPA application was updated and included the usage of angular rock specifically allowable in the contract for the usage of bypass energy dissipation in a temporary condition.
2. Skanska was directed to remove rock materials that were approved for usage in the updated HPA design, which WSDOT reviewed.

WSDOT's determination of no merit to Skanska's position, neglects to consider WSDOT's active participation in the process of providing review and direction to remediate the usage of angular rock. The direction alone on August 19th, 2025, from WDFW should have accompanied an OIC as requested by under Skanska SL-224.

Skanska has proceeded in good faith to replace the angular rock per WSDOT direction under NCI-009727-00362.001. We respectfully request that WSDOT retract NCI-009727-00362.001 as Atlas provided a competent TSDP design in accordance with contract requirements and the subsequent installation followed the approved documentation. We also request that WSDOT promptly issue an Owner-Initiated Change (OIC) to address all associated impacts resulting from the replacement.

SKANSKA

At this time, Skanska and Atlas continue to reserve our rights to just compensation for the recovery of all cost and time impacts associated with this change of rock materials in accordance with the contract and applicable law.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Patrick Prendergast, Vice President

Skanska USA Civil
18911 N Creek Pkwy S, Suite 300
Bothell, WA 98011

Attachment:

1. Atlas_Response to SL No. 9727-174_2025-10-17

17619 NE 67th CT, #100, Redmond, WA 98052
425.429.7800 | oneatlas.com

October 17, 2025

Evelyn Pao, P.E., Project Director
Washington State Department of Transportation
18911 N Creek Pkwy S, Suite 150
Bothell, WA 98011

PROJECT: Contract No.: 9727, I-405, Brickyard to SR 527 Improvement Project

SUBJECT: Use of RESP Class C Angular Rock at Juanita Creek Temporary Bypass - Request for Owner-Initiated Change (OIC) and Retraction of the Non-Conformance Issue (NCI)

Dear Evelyn,

On behalf of Skanska, we submit this correspondence in response to Washington Department of Transportation (WSDOT) SL No. 9727-174, dated October 7, 2025, concerning the Non-Conformance Issue (NCI) associated with the use of RESP Class C angular rock in the Juanita Creek temporary bypass and stilling basin. We respectfully request that WSDOT retract the NCI and recognize the matter as an Owner-Initiated Change (OIC). The design and installation of the angular rock stilling basin were performed in accordance with approved procedures, under WSDOT direction, and consistent with the Hydraulic Project Approval (HPA) permit modification process (WDFW 2025[1]).

Chronology of Events

- May 20, 2025 – Initial Submittal: Atlas submitted the Juanita Creek Temporary Stream Diversion Plan (TSDP) to WSDOT for review. The initial configuration relied on tying into an existing culvert and plunge pool with no rock fortification.
- June 10, 2025 – Agency Comments: WSDOT Hydraulics and the City of Kirkland requested the addition of rock fortification to prevent scour at the bypass outlet.
- June 20, 2025 – Revised Design: Atlas revised the design to include a stilling basin using RESP Class C angular rock, a standard energy-dissipation method consistent with WSDOT Hydraulic Manual Section 3-4.7 for outlets with velocities exceeding 15 feet per second (WSDOT 2025)[2].

---

[1] WDFW (Washington Department of Fish and Wildlife). 2025. Hydraulic Project Approval. Permit Number 2021-4-857+01. Application ID: 26582. Issued 2021. Reissued 2025.

[2] WSDOT (Washington Department of Transportation). 2025. Hydraulics Manual M23-03.11. Engineering and Regional Operations Hydraulics Office. April 2025. Available at: https://wsdot.wa.gov/engineering-standards/all-manuals-and-standards/manuals/hydraulics-manual.

- June 23, 2025 – WSDOT Approval and Permit Coordination: WSDOT reviewed and accepted the revised design and submitted a permit modification request through the Aquatic Protection Permitting System (APPS) system for Washington Department of Fish and Wildlife's (WDFW) review.
- July 7, 2025 – HPA Modification Approved: WDFW issued a minor modification approval to HPA Permit No. 2021-4-857+01, specifically incorporating the updated TSDP with the angular rock scour protection.
- July 10, 2025 – Comment Resolution: Final comment resolution was completed among WSDOT, Skanska, and Atlas, closing out hydraulic and stormwater coordination.

Discussion

HPA Provision 67 does not govern temporary stream diversion conditions. The provision states:

> "*Size streambed material to mimic the stream's natural gradation as found in nearby reference channel reaches. Place a minimum of 24 inches deep of clean, rounded and well-graded material. Angular rock is not permitted within the channel or culvert.*"

This language found under the "CULVERTS" heading was written for permanent streambed reconstruction and fish passage conditions within the finished channel and culvert, not for short-term diversion or energy dissipation from a temporary bypass. The reference in the provision to "natural gradation" and "reference channel reaches" is consistent with the Stream Simulation Design approach described in the WDFW *Water Crossing Design Guidelines* (Barnard et al. 2013)[3], and other guidance documents that apply to permanent fish-passage structures.

By contrast, HPA Provision 52, found under the "TEMPORARY BYPASS" heading, requires the applicant to "Dissipate flow energy from the diversion to prevent scour or erosion of the channel and bank," but does not prescribe a specific gradation or streambed mix, nor does it explicitly prohibit the use of angular rock.

WSDOT's current interpretation applies HPA Provision 67 in a piecemeal manner, selecting certain elements to enforce for the temporary condition while allowing deviations from others. The temporary bypass and stilling basin are short-term, construction-phase structures intended to dissipate energy and protect the overwinter condition from high-velocity discharge at the bypass outlet. It would be inappropriate to size a stilling basin for this condition using the reference reach gradation criterion of HPA Provision 67. The hydraulic forces, duration, and design objectives differ from those of a constructed stream channel; accordingly, it is just as reasonable to deviate from the "angular rock" restriction of HPA Provision 67 as it is to deviate from the "reference reach" requirement.

Permit Interpretation and Approval Pathway

The HPA establishes a process for obtaining authorization for unlisted or temporary streambed designs. HPA Provision 66 states:

> "*This project does not have an authorized streambed mix, meander bar design, or fine bands design at the time of HPA issuance. To approve the placement of streambed material…updated design*

---

[3] Barnard, R. J., J. Johnson, P. Brooks, K. M. Bates, B. Heiner, J. P. Klavas, D.C. Ponder, P.D. Smith, and P. D. Powers. 2013. Water Crossing Design Guidelines. Washington Department of Fish and Wildlife, Olympia, Washington. May 9, 2013. Available at: https://wdfw.wa.gov/publications/01501.

drawings and streambed mix specifications must be reviewed by WDFW and authorized through an HPA modification prior to construction."

Consistent with that directive, the TSDP with Class C angular rock used for the energy dissipation pad was prepared, reviewed by WSDOT, and transmitted for formal approval by WDFW through the HPA modification process. That modification was approved on July 7, 2025, and subsequently incorporated into the project permit record.

Failure to comply with the permit-incorporated plan would have constituted a breach of the terms of the permit. HPA Provision 3 *Approved Plans* states the applicant "…must accomplish the work per plans and specification submitted with the application and approved by [WDFW]…" including "…all supporting documents and communications uploaded to the Aquatic Protection Permitting System (APPS) project file…". To that end, WSDOT, after a separate change related to adding a length of 48-inch HDPE to the overwinter pipe, had Skanska prepare a Request for Information (RFI) and forward documentation of the change to WDFW for official approval, showing WSDOT's intent to comply with this provision. Failure to follow our approved plan for use of the Class C rock would similarly have placed the project out of compliance with the strict application of this provision.

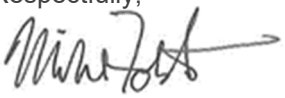
At the time of construction, the Design Build team had therefore fulfilled procedural and permit requirements for the installation of the angular rock stilling basin and would have been out of compliance with permit requirements had they deviated. The later determination that angular rock was inconsistent with HPA Provision 67 represents a change in interpretation, not a design or procedural failure.

Clarification Requested

1. How are designers of the TSDP to interpret and apply HPA streambed material requirements (e.g., HPA Provision 67) when they are written for permanent fish-passage conditions, not temporary energy-dissipation structures?
2. When a plan has been submitted to WSDOT, reviewed, and transmitted for HPA modification and subsequent incorporation into the permit record, does a reinterpretation after the fact constitute a non-conformance by the contractor?

It is our position that this situation does not constitute a non-conformance by the contractor. The review, acceptance, and transmittal of the design by WSDOT, and subsequent approval from WDFW, demonstrate that required processes were followed. Subsequent direction to remove and replace the material therefore constitutes an OIC rather than a non-conformance.

Respectfully,



Mike Foster
Design-Build Environmental Compliance Manager
ATLAS TECHNICAL CONSULTANTS, LLC

CC, P. Prendergast, R. Prescott