



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000  
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May 5, 2015

PMF Investments  
ATTN: Mr. James Spitzer  
15015 Main Street, Ste. 203  
Bellevue, WA 98007

RE: Water Quality Certification Order No. 11412 for Corps Public Notice No. NWS-2014-1135, PMF East Retail Center, Wetlands, Whatcom County, Washington

Dear Mr. Spitzer:

On December 4, 2014, PMF Investments 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 PMF East Retail Center project.

The proposed project involves filling 1.03 acres of Category III PFO wetlands to construct approximately 60,000 square feet of retail space and associated parking with underground stormwater detention facilities on W. Bakerview Rd. in Bellingham, WA. Mitigation is to be provided through the purchase of 1.22 credit acres from the Lummi Nation Wetland and Habitat 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.

If you have any questions, please contact Patrick McGraner at (425) 649-4447. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Paul Anderson  
Wetlands/401 Unit Supervisor  
Shorelands and Environmental Assistance Program



PMF Investments  
May 5, 2015  
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Enclosure

By certified mail: 7012 1640 0000 6245 9269

cc: Randel Perry Corps of Engineers

e-cc: Loree Randall, HQ SEA  
Kate Thompson, HQ SEA  
Susan Meyer, NWRO  
Raman Iyer, NWRO  
Marieke Armstrong, Mead & Hunt  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

IN THE MATTER OF GRANTING A ) ORDER #11412  
WATER QUALITY ) Corps Reference No. NWS-2014-1135  
CERTIFICATION TO ) PMF East Retail Center Project, Wetlands,  
PMF Investments ) Bellingham, Whatcom County, 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: PMF Investments  
Attn: Mr. James Spitzer  
PMF Investments  
15015 Main Street, Ste. 203  
Bellevue, WA 98007

On December 4, 2014 PMF Investments submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on February 18, 2015.

The proposed PMF East Retail Center project will create approximately 60,000 square feet of retail space with associated parking, underground stormwater detention facilities, and LID facilities. In order to develop the site, four Category III forested wetlands will be filled for a total of 1.03 acres. In addition, another .22 acres of off-site wetland will be indirectly impacted. To offset these impacts, the applicant is proposing to purchase 1.22 acres of credit from the Lummi Nation Wetland and Habitat Mitigation Bank.

The project is located at 1240 W Bakerview Road, Bellingham, Whatcom County, Washington, in wetlands, Section 11, T. 38 N, R 2 E, 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 not violate 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 PMF Investments 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: Wetlands Specialist, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #11412 and Corps Reference #NWS-2014-1135.
- A3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Permit Application (JARPA) received by Ecology on December 4, 2014. The Applicant will be out of compliance with this Order and must submit an updated JARPA 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. 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.
- A7. 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.
- A8. 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.
- A9. 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.
- A10. 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.
- A11. 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 Compensatory Mitigation Conditions:**

- B1. The Applicant shall mitigate wetland impacts as described in the Mitigation Bank Use Plan – Bellingham Retail Center East for PMF Investments prepared by Mead & Hunt, November 2014 (hereafter called the “mitigation plan”) or as revised and approved by Ecology.
- B2. Prior to impacting wetlands, the Applicant shall submit to Ecology documentation from the bank sponsor verifying the purchase of 1.22 wetland mitigation bank credits (credits)

from the Lummi Nation Wetland and Habitat Mitigation Bank. 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.

- B3. The Applicant shall notify Ecology of any changes to the amount of wetland impacts, or revisions to the mitigation plan.
- B4. 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. A copy of the receipt for the purchase of credits shall be sent to Ecology per A2 above.
- B5. 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) PMF East Retail Center project; and
  - b) Lummi Nation Wetland and Habitat Mitigation Bank
- With the:
- c) Reason for the delay;
  - d) Expected date of completion; and
  - e) The Applicant shall submit an updated written notification every 12 months thereafter until the PMF East Retail Center project is complete and the required credits are purchased.

**C. Conditions for Construction Activities:**

**General Conditions:**

- C1. Applicant shall obtain and comply with a Construction Stormwater General Permit for this project.
- C2. Construction stormwater, sediment, and erosion control best management practices (*e.g.*, filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- C3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- C4. All construction debris shall be properly disposed of in a manner to prevent it from entering the wetlands and/or wetland buffers.
- C5. 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.

C6. 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.

C7. Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.

**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 Northwest Regional Office Wetlands Specialist at 425-649-4447 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 three years from the date of issuance of the Corps permit.

**F. Reporting and Notification Requirement Conditions**

F1. The Applicant shall provide to Ecology's 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.

F2. Applicant shall provide notice to Ecology's Northwest Regional Office Wetlands Specialist, Patrick R. McGraner:

- At least three (3) days prior to the start of construction;
- Within 14 days after completion of construction at the project site; and
- At least seven (7) days within the start of impacts to wetlands.

Notification, referencing Corps Reference #NWS-2014-1135, Order #11412 can take place by telephone to 425-649-4447 or 425-649-7000, fax to 425-649-7098 or in writing.

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

## CONTACT INFORMATION

Please direct all questions about this Order to:

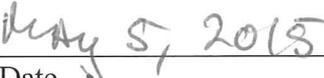
Patrick R. McGraner  
 Department of Ecology  
 Northwest Regional Office  
 3190 160<sup>th</sup> Avenue SE  
 Bellevue, WA 98008  
 (425) 649-4447  
[Patrick.McGraner@ecy.wa.gov](mailto:Patrick.McGraner@ecy.wa.gov)

## 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>
- Chapter 173-204 WAC – Sediment Management Standards**  
[www.ecy.wa.gov/biblio/wac173204.html](http://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](http://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](http://www.ecy.wa.gov/biblio/wac173201A.html)

**SIGNATURE**

  
\_\_\_\_\_  
Paul Anderson  
Wetlands/401 Unit Supervisor  
Shorelands and Environmental Assistance Program

  
\_\_\_\_\_  
Date

**ATTACHMENT A**

**PMF INVESTMENTS  
PMF EAST RETAIL CENTER PROJECT  
Water Quality Certification Order #11412**

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

I have read and understand the conditions of Order #11412 Section 401 Water Quality Certification for the PMF Investments – PMF East Retail Center 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