



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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October 25, 2013

Naoyuki Ishii, Vice President
Larrabee Springs, Inc.
205 West Smith Road
Bellingham, Washington 98226

RE: Administrative Order #10328 for placement of fill in 1.08 acres of isolated wetlands
to enable the construction of a residential development in the Cordata area of the
City of Bellingham, Whatcom County, Washington

Dear Mr. Ishii:

On May 13, 2013, the Department of Ecology (Ecology) received a Joint Aquatic Resources Permit Application (JARPA) to place fill in both isolated (1.08 acres) and jurisdictional (0.50 acres) wetlands. On September 23, 2013, the Army Corps of Engineers issued a Nationwide Permit #29 for fill in jurisdictional wetlands (Corps Reference No. NWS-2007-1539). The Corps had determined that the proposed project met the conditions of the state 401 certification and that no further coordination with Ecology was required regarding the jurisdictional wetland impacts.

The State of Washington has determined that the proposed work in isolated wetlands, as conditioned by the enclosed Order, will comply with applicable provisions of Chapter 90.48 RCW and other appropriate requirements of State law. This approval is subject to the conditions contained in the enclosed Order, which you should read and understand prior to construction in isolated wetlands. Please note that Ecology is requiring proof of a Wetlands Notice for the entire mitigation area at the same time the first as-built report is submitted.

If you have any questions, please contact Susan Meyer at (425) 649-7168 or susan.meyer@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Erik Stockdale, Section Manager
Shorelands and Environmental Assistance Program

ES:SM:cja

By Certified Mail: 7011 0470 0003 3720 7608

e-cc: Robert Carmichael
Ed Miller, Miller Environmental Services, LLC
Randel Perry, Corps of Engineers
Kim Weil, City of Bellingham
Rebekah Padgett, Ecology/NWRO
ecyrefedpermits@ecy.wa.gov



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF THE REQUEST BY) Corps Ref #NWS-2007-1539
LARRABEE SPRINGS, INC.)
FOR AN ADMINISTRATIVE ORDER TO) ORDER # 10328
CONDUCT WORK IN ISOLATED WETLANDS)

TO: Larrabee Springs, Inc.
Naoyuki Ishii
Caitac USA
205 West Smith Road
Bellingham, Washington 98226

This is an Administrative Order requiring Larrabee Springs, Inc. to comply with Chapter 90.48 RCW and the rules and regulations of the Department of Ecology (Ecology) by taking certain actions which are described below. RCW 90.48.120(1) authorizes Ecology to issue Administrative Orders requiring compliance whenever it determines that a person has violated or creates a substantial potential to violate any provision of Chapter 90.48 RCW.

Ecology received the Larrabee Springs, Inc. Joint Aquatic Resources Permit Application (JARPA) on May 13, 2013 requesting an Administrative Order to impact 1.08 acres of isolated wetlands to construct a residential development in Whatcom County. The site is located in the NW and NE quarters of Section 1, Township 38N, Range 2E, WRIA 1, Whatcom County, Washington.

This Administrative Order authorizes 1.08 acres of Category III and IV isolated wetland impacts at the project location to be incurred in phases. Onsite mitigation for this proposal including for impacts to non-isolated wetlands for all phases will consist of 2.14 acres/93,003 SF of wetland creation, 3.05 acres/132,651 SF of wetland enhancement, 6.18 acres/269,042 SF of wetland buffer enhancement, and 3.82 acres/166,267 SF of riparian buffer enhancement for a total area of mitigation of 15.19 acres/660,963 SF and all other actions as proposed in the Updated (2013) Critical Areas Report and Mitigation Plan for the E 8-9 Project, dated August 20th, 2013 and the Addendum, dated September 10, 2013.

For purposes of this Order, the term "Applicant" shall mean Larrabee Springs, Inc. and its agents, assigns, and contractors.

In view of the foregoing and in accordance with RCW 90.48.120(1):

IT IS ORDERED that the Applicant shall comply with the following:

A. General Conditions:

1. The Applicant shall construct and operate the project in a manner consistent with the project description contained in the JARPA received by Ecology on May 13, 2013 or as otherwise approved by Ecology.

2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: Susan Meyer, SEA Program, 3190 -160 Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order No. 10328 and Corps No. NWS-2007-1539.
3. The Applicant shall provide access to the project site and mitigation site upon request by Ecology.
4. 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 foremen, and state and local government inspectors.
5. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines 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 the public interest.
6. 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.

B. Notification Requirements:

1. The Applicant shall provide written notification (FAX, e-mail or mail) to Ecology's Northwest Regional Office Wetland Specialist, Susan Meyer, in accordance with condition A.2 above for the following activities:
 - a. At least ten (10) days prior to the onset of in-water work, including wetlands
 - b. At least ten (10) days prior to the onset of work at the wetland mitigation site
 - c. Immediately following a violation of the state water quality standards or any condition of this Order
 - d. Within fourteen (14) days after completion of construction of each phase.

C. Wetland Compensatory Mitigation Conditions:

1. The Applicant shall mitigate wetland impacts as described in the plan entitled *Updated (2013) Critical Areas Report and Mitigation Plan for the E8-9 Project*, dated August 20, 2013 and the Amendment to the Plan dated September 10, 2013, except as modified in this Order or revised and approved by Ecology.
2. The Applicant shall submit any changes to the mitigation plan in writing to Ecology (per condition A.2. above) for review and approval before work begins or when problems occur during construction requiring plan changes.
3. To ensure proper installation, the Applicant's wetland professional must supervise and inspect all mitigation site construction and planting.

Implementation

4. The Applicant shall begin the compensatory mitigation project before or concurrent with impacting wetlands within each phase of the project. Ecology may require additional compensation to account for additional temporal loss if the mitigation is not completed in a timely manner.
5. The Applicant shall ensure that all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers and above the 100-year floodplain.
6. 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.
7. If seeding is used as a temporary erosion control BMP, it must be a wetland mix consisting of native, annual, non-invasive plant species.
8. The Applicant shall place signs at the extent of the mitigation area's boundaries, including buffers, every 100 feet, which mark the area as wetland mitigation.
9. Upon completion of site-grading and prior to planting, the Applicant shall submit to Ecology written confirmation that the finished grades are consistent with the approved mitigation plan or subsequent Ecology-approved plan changes. Written confirmation can be a signed letter from the surveyor or project engineer indicating how final elevations were confirmed and whether they are consistent with the plan.
10. Within ninety (90) days of completing site construction and planting for each phase of the mitigation site, the Applicant shall submit an as-built report with maps to Ecology. The As-Built report must:
 - a. Document site conditions at Year Zero;
 - b. Be submitted to Ecology per Condition A.2. of this Order as one hard copy and one electronic file;
 - c. Include the information listed in Attachment B;
 - d. After phase 1a mitigation construction and planting, the as-built shall include documentation of a Recorded Wetlands Notice for the entire mitigation area.
11. If the mitigation project is not completed within 13 months of this Order's date, the Applicant shall submit a written construction status report and submit status reports every 12 months until construction and planting are complete and the final as-built report is submitted.
12. Within ninety (90) days of completing construction and planting for phase 1a, the Applicant shall record a Wetlands Notice (see Attachment C), a copy of Ecology's Order, and the as-built report. These documents must be recorded with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.

Monitoring and Maintenance:

13. The Applicant shall water and maintain all plantings at the mitigation site so as 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.
14. The Applicant shall monitor each phase of the mitigation site for a minimum of ten (10) years as described in the mitigation plan. Additional monitoring of the mitigation area may be required by Ecology if wetland monitoring reveals that performance measures are not being met.
15. Performance Standard A.1.b. shall be the "The compensatory wetland creation areas will be inundated or its soils will be saturated to within 12 inches of the soil surface for at least 30 consecutive days of the growing season, between March 15 and October 31, in years when rainfall meets or exceeds the 30-year average." Hydrology monitoring shall be conducted so as to demonstrate that this performance standard has been met in years 1, 2 and 3.
16. There shall be 0% cover of the invasive knotweed species including but not limited to *Polygonum cuspidatum*, *P. bohemicum* and *P. polystachyum*.
17. The Applicant shall submit monitoring reports (one hard copy file and one electronic file per Condition A.2. of this Order) for each phase of the mitigation to Ecology documenting site conditions at the mitigation site for years 1, 2, 3, 5, 7 and 10, and the reports must contain, at a minimum, the information listed in Attachment D. Reports must be submitted by December 31st of each monitoring year.
18. The Applicant shall implement the mitigation plan's contingency measures if goals, objectives, and performance standards are not being met.
19. Prior to implementing any unidentified contingency measures, the Applicant shall consult with Ecology.
20. When necessary to meet the performance standards, the Applicant shall replace dead or dying plants with the same species, or a native plant alternative appropriate for the location, during the first available planting season and note the species, numbers, and approximate locations of all replanted materials in the subsequent monitoring report.
21. For monitoring years five (5) and ten (10) the Applicant shall use the currently approved federal wetland delineation manual and appropriate regional supplement to delineate all compensatory wetlands and include delineation information (e.g. data sheets, maps, etc.) in the monitoring reports.
22. At the end of the monitoring period, the Applicant shall use the August 2004 or updated version of "Washington State Wetlands Rating System for Western Washington" to rate all wetlands and include the information in the monitoring report.
23. The property owner shall grant Ecology access to the mitigation area for inspection during the 10 year monitoring period or until mitigation success has been achieved.
24. 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.

25. Until the Applicant has received written notice from Ecology that the Mitigation Plan has been fully implemented, the Applicant's obligation under Condition C.1 to mitigate for wetland impacts is not met.

Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

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:

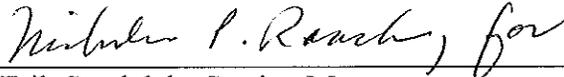
- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

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

DATED October 25, 2013 at Bellevue, Washington.


 Erik Stockdale, Section Manager
 Shorelands & Environmental Assistance Program
 Northwest Regional Office – Ecology
 State of Washington

ATTACHMENT A

**Larrabee Springs, Inc.
E -8, E-9 Project
Administrative Order# 10328**

**Statement of Understanding of
Administrative Order Conditions**

I have read and understand the conditions of Order #10328 Larrabee Springs, Inc., E-8, E-9 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

Attachment B
Information Required for As-built Reports
(See Condition C10)
Larrabee Springs, Inc.
E-8, E-9 Project
Administrative Order # 10328

Ecology requires the following information for as-built reports submitted under this Order. Ecology will accept additional information that may be required by other agencies.

Background Information

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

Mitigation Project Information

- 5) Brief description of the final mitigation project with any changes from the approved plan made during construction. Include:
 - a) Actual acreage of Cowardin classes and mitigation type(s) (re-establishment, rehabilitation, creation, enhancement, preservation, upland, buffers).
 - b) Important dates, including:
 - i. Start of project construction.
 - ii. When work on the 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.
- 6) Description of any problems encountered and solutions implemented (with reasons for changes) during construction of the mitigation site(s).
- 7) List of any follow-up actions needed, with a schedule.
- 8) Vicinity map showing the geographic location of the site(s) with landmarks.
- 9) Mitigation site map(s), 8-1/2" x 11" or larger, showing the following:
 - a) Boundary of the site(s).
 - b) Topography (with a description of how elevations were determined).
 - c) Installed planting scheme (quantities, densities, sizes, and approximate locations of plants, as well as the source(s) of plant material).
 - d) Location of habitat features.
 - e) Location of permanent photo stations and any other photos taken.Include the month and year when each map was produced or revised. The site map(s) should reflect on-the-ground conditions after the site work is completed.
- 10) Photographs taken at permanent photo stations and other photographs, as needed. Photos must be dated and clearly indicate the direction from which each photo was taken. Photo pans are recommended.
- 11) A copy of any deed notifications, conservation easements, or other approved site protection mechanism.

**Attachment C
Wetland Notice for Deed Notification
(See Condition C12)**

**Larrabee Springs, Inc.
E-8, E-9 Project**

Administrative Order # 10328

Tax Parcel Number: _____

Legal Description: _____

Legal Owner: _____

NOTICE: This property contains wetlands as defined by Chapter 36.70A030(21) RCW, Chapter 90.58.030 (2)(h) RCW and WAC 173-201A-020. The property was the subject of an Ecology action under Chapter 90.48.260 RCW or Chapter 90.48.120(1) RCW.

_____, issued on _____, 20____
(Corps federal reference #) (Ecology Docket #)

to _____ for _____
(Applicant Name) (Project Name)

Restrictions on use or alteration of the wetlands may exist due to natural conditions of the property and resulting regulations. A copy of Ecology's Order and the site map from the final wetland mitigation plan indicating the location of wetlands and their buffers is attached hereto.

EXECUTED this _____ day of _____, 20____.

State of Washington)
County of _____)

I certify that I know or have satisfactory evidence that _____
signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in
this instrument.

GIVEN under my hand an official seal this _____ day of _____, 20____.

NOTARY PUBLIC in and for the state of Washington,
residing at _____ (Amended by

Attachment D
Information Required for Monitoring Reports
(See Condition C17)

Larrabee Springs, Inc.
E-8, E-9 Project

Administrative Order # 10328

Ecology requires the following information for monitoring reports submitted under this Order. Ecology will accept additional information that may be required by other agencies.

Background Information

- 1) Project name.
- 2) Ecology Order number and the Corps reference number.
- 3) Name and contact information of the person preparing the monitoring report. Also, if different from the person preparing the report, include the names of:
 - a) The applicant
 - b) The landowner
 - c) The party responsible for the monitoring activities.
- 4) Dates the monitoring data were collected.
- 5) Date the report was produced.

Mitigation Project Information

- 6) Brief description of the mitigation project, including acreage of Cowardin classes and mitigation type(s) (re-establishment, rehabilitation, creation, enhancement, preservation, upland, buffers).
- 7) Description of the monitoring approach and methods.
- 8) Summary table(s) comparing performance standards with monitoring results and whether each standard has been met.
- 9) Discussion of how the monitoring data were used to determine whether the site(s) is meeting performance standards.
- 10) Goals and objectives and a discussion of whether the project is progressing toward achieving them.
- 11) Summary, including dates, of management actions implemented at the site(s), for example, maintenance and corrective actions.
- 12) Summary of any difficulties or significant events that occurred on the site that may affect the success of the project.
- 13) Specific recommendations for additional maintenance or corrective actions with a timetable.
- 14) Photographs taken at permanent photo stations and other photographs, as needed. Photos must be dated and clearly indicate the direction from which each photo was taken. Photo pans are recommended.
- 15) Vicinity map showing the geographic location of the site(s) with landmarks.
- 16) Mitigation site map(s), 8-1/2" x 11" or larger, showing the following:
 - a) Boundary of the site(s).
 - b) Location of permanent photo stations and any other photos taken.
 - c) Data sampling locations, such as points, plots, or transects.
 - d) Approximate locations of any replanted vegetation.
 - e) Changes to site conditions since the last report, such as areas of regrading, a shift in the location of Cowardin classes or habitat features, or a change in water regime.

Include the month and year when each map was produced or revised. The site map(s) should reflect on-the-ground conditions during the most recent monitoring year.