



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

*Northwest Regional Office 3190 160th SE Bellevue, Washington 98008-5452 (425) 649-7000*

December 13, 2012

Mr. Hafeez Pirbhai  
Mayflower Equities, Inc.  
6151 Collingswood Place  
Vancouver, B.C.  
Canada V6N 1V2

**RE: Ecology Denial for Section 401 Water Quality Certification for the Monterey Heights Project, Seattle, Whatcom County, Washington for U.S. Army Corps of Engineers (Corps) Reference #NWS-2011-812**

Dear Mr. Pirbhai:

The Department of Ecology (Ecology) issued a Public Notice on August 1, 2012 for the above referenced project. Ecology has 180 days from the date of the Public Notice to make a decision regarding the 401 Water Quality Certification (401 Certification). On November 6, 2012, Ecology sent you a letter explaining that there are several issues that need to be resolved before we can make our 401 decision.

Following that letter, Patrick McGraner, Wetlands Specialist for the Department of Ecology visited the site with Jim Wiggins and Janet Cray of ATSI on 11/28/12, which resulted in Ecology identifying the following additional concerns or questions that need to be resolved before we can issue a 401 Certification.

- During the 11/28/2012 site visit Ecology was not able to field verify the wetland because the wetland flags were no longer on the site. Wetland delineations are considered valid for five years following verification by Ecology. The wetland was delineated in March 2004 and was not verified by Ecology. The wetlands need to be re-delineated and the boundaries marked and verified for accuracy by Ecology.
- Ecology does not have any documentation in our record that indicates that the wetland boundaries have been field verified by the US Army Corps of Engineers.
- Without a field-verified delineation, we are unable to confirm that the proposed wetland creation area is outside of jurisdictional wetlands. Wetland conditions were observed during the 11/28/2012 site visit in the area estimated to be where wetland creation is proposed. Mitigation credit cannot be given for creating wetland in an area that is already wetland. If the wetland delineation indicates that the current proposed wetland creation is within an existing wetland, other mitigation options need to be evaluated.
- We also found wetland conditions south of Lot 39 in the area where the detention pond is proposed to be built.

- Ecology has concerns with the location of the proposed detention pond south of Lot 39 with regards to the seasonal high water table. The water table was found to be within 8 inches of the surface in the general location of the detention pond. Our concern is whether the detention facility can function properly in a high groundwater area. Additionally, building a pond in this location would appear to inhibit the shallow subsurface interflow from Wetland 3 downslope toward Wetland 1. Additional analysis is required to ensure compliance with the Ecology stormwater manual.
- The on-site wetlands were not rated separately as required. Each of the wetlands need to be rated separately using *Ecology's Washington State Wetland Rating System for Western Washington (Revised), August 2004, Ecology Publication #04-06-025*.
- Once the wetlands are re-rated, the appropriate buffer for each wetland is assigned based on joint state-federal guidance titled "Wetland Mitigation in Washington State. Part 1: Agency Policies and Guidance." This document is available at <https://fortress.wa.gov/ecy/publications/SummaryPages/0606011a.html>
- Indirect impacts to Wetlands 4, 5 & 6 will occur by completely surrounding them with development, causing degradation to the existing functions of these wetlands within the landscape. It is not known whether the hydrology to these wetlands would increase or decrease post-development. Impacts to these wetlands should be fully assessed and mitigated for as may be necessary.

The number of issues identified above will likely require a project redesign, as well as further discussions between your project team and our staff. With the statutory timeframe approaching, Ecology has determined that there is insufficient time to work out the details needed to get reasonable assurance that the project will meet state water quality laws. Therefore, pursuant to Section 401 of the Clean Water Act, ch. 90.48 RCW and ch. 173-201A WAC, the Monterey Heights Project Water Quality Certification is denied without prejudice.

Receipt of a denial without prejudice does not preclude Mayflower Equities, Inc. from resubmitting a request for 401 Certification at a later date. The Department of Ecology is ready and willing to work closely with you to find an alternative design that addresses the difficult issues related to this project.

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

**SIGNATURE**

  
Erik Stockdale, Unit Supervisor  
Wetlands/401 Unit  
Shorelands and Environmental Assistance Program  
Northwest Regional Office

12-13-12  
December 13, 2012

ES:rrp:cja

**By Registered Mail: RE 135 204 228 US**

cc: Matthew Bennett, U.S. Army Corps of Engineers  
Randel Perry, U.S. Army Corps of Engineers  
Jim Wiggins, ATSI, Inc.  
Janet Cray, ATSI, Inc.  
Wayne Fitch, Whatcom County Planning and Development Services

e-cc: Patrick McGraner – NWRO  
Susan Meyer – NWRO  
Loree' Randall – HQ  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)