



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

April 7, 2006

REGISTERED MAIL
RB 670 437 580 US

South Church LLC
2723 Douglas Road
Ferndale, Washington 98248

Dear Sir or Madam:

RE: Order No. 3229: Administrative Order for placement of fill in 2.61 acres of wetlands, 2.47 of which are Prior Converted Cropland wetlands, to develop single-family homes on 20 acres of a 30-acre property in the City of Ferndale, Whatcom County, Washington.

The request for an administrative order for proposed work in wetlands within the Red River drainage basin, City of Ferndale, Whatcom County has been reviewed. The State of Washington has determined that the proposed work, 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. If you have any questions, please contact Susan Meyer at 425-649-7168. Written comments can be sent to her at the Department of Ecology, Northwest Regional Office, 3190 160th Avenue SE, Bellevue, WA 98008 or sume461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Geoff Tallent
Section Manager
Shorelands and Environmental Assistance Program

GT:cja

cc: Randel Perry, Corps of Engineers
Tom Black, City of Ferndale
Steven Storm
Joan Marchioro, Ecology/ATG
Loree' Randall, Ecology/HQ
Charles Klinge, Groen, Stephens, and Klinge LLP
Bill Cantrell, Cantrell and Associates
Andrew Craig, Ecology/BFO
Barry Wenger, Ecology/BFO
Penny Keys, Ecology/HQ
Erik Stockdale, Ecology/NWRO



**IN THE MATTER OF THE REQUEST BY)
SOUTH CHURCH LLC)
FOR AN ADMINISTRATIVE ORDER TO) ORDER NO. 3229
CONDUCT WORK IN PRIOR CONVERTED)
CROPLAND WETLANDS)**

TO: South Church LLC
2723 Douglas Road
Ferndale, WA 98248

This is an Administrative Order requiring South Church LLC 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 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.

South Church LLC is proposing to develop a 30-acre site in Ferndale, Washington. The site is currently used for agricultural purposes. On July 23, 2004, Ecology received a request from South Church LLC to fill 3.68 acres of wetlands to construct a residential housing development on 20 acres of the 30-acre site. Through project modifications during the permitting process, the amount of fill has decreased to 2.61 acres of wetlands, 2.47 acres of which have been designated as Prior Converted Cropland by the U.S. Army Corps of Engineers (Corps).

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

IT IS ORDERED that South Church LLC shall comply with the following:

1. South Church LLC shall construct and operate the project in a manner consistent with the following:
 - a. The project description contained in *Wetland Mitigation Plan for Property Southeast of the Intersection of South Church Road and Douglas Road, Parcel Number 390230 060150, Corps Reference Number 200400879 (Wetland Mitigation Plan)*, dated February 10, 2005;
 - b. Correspondence from William G. Cantrell of Cantrell and Associates, to Susan Meyer of Ecology, dated March 29, 2006; and
 - c. The drawing attached to the Cantrell letter titled "Modification to Access Road Per DOE," drawn by TRJ and WGC, dated March 29, 2006, or as otherwise approved by Ecology.

2. Project mitigation shall be constructed and maintained as described in *Wetland Mitigation Plan for Property Southeast of the Intersection of South Church Road and Douglas Road, Parcel Number 390230 060150, Corps Reference Number 200400879 (Wetland Mitigation Plan)*, dated February 10, 2005, with the addition of the following condition:
 - a) Native upland plant species shall be installed in the area of the wetland buffer where the original stormwater pond access road was removed from the site plan per the above-referenced drawing dated March 29, 2006. These buffer plantings shall be subject to the same performance standards and monitoring protocols as those for the other buffer areas on the site (Pages 40-43 of the *Wetland Mitigation Plan*).
3. Timing: The *Wetland Mitigation Plan* shall be implemented concurrently with the site construction for the development.
4. Field Supervision: The wetland mitigation grading activity and plant installation shall be field-supervised by a qualified wetland ecologist to ensure proper elevations are achieved and plants are appropriately placed.
5. Access: South Church LLC shall provide access to the project site and the mitigation site upon request by Ecology.
6. As-Built Report: An As-Built Report for this project shall be completed and shall contain the following elements:
 - Final site topography;
 - Photographs of the area taken from permanent reference points;
 - The installed planting scheme showing quantities, densities, sizes, and approximate locations of plants, as well as plant sources and the time of planting;
 - Types of habitat features (e.g., snags, large woody debris) and their locations;
 - Locations of permanent vegetation transects, sampling and monitoring sites; and
 - An analysis of any changes to the mitigation plan that occurred during construction.

A copy of the As-Built Report and drawing shall be sent to Ecology's Northwest Regional Office Attn: Susan Meyer, 3190 160th Ave SE, Bellevue, WA 98008 within 60 days of completing construction and planting, and in no case later than July 1, 2007.

7. Deed Restriction: Permanent protection of the wetland mitigation area and buffers shall be recorded on the property deed. The deed shall clearly indicate that the wetland mitigation and preservation mitigation areas are "waters of the state." Documentation that this requirement has been fulfilled shall be provided to Ecology's Susan Meyer as part of the As-Built Report.
8. Monitoring and Contingency Plan: Monitoring shall be conducted as described in the *Wetland Mitigation Plan* beginning on page 40.

A written report describing the monitoring results will be submitted to Ecology's Susan Meyer in years 1, 2, 3, 5, 7, and 10 post-mitigation installation. In addition to the elements of monitoring described in the mitigation plan, the following conditions apply:

- a) Performance Standards: Mitigation efforts shall be monitored for compliance with the performance standards referenced on pages 42-44 of the *Wetland Mitigation Plan*. If the results of monitoring show that the mitigation area does not satisfy the performance standards set forth in the mitigation plan, additional monitoring and mitigation may be required (e.g., replanting, soil amendments, selection of alternative species, reevaluation of the Standard of Success, etc.). Any additional monitoring or mitigation measures are subject to review and approval by Ecology.
- b) The boundaries of the mitigation area and buffers shall be permanently marked with stakes at least every 100 feet. The marking shall include signage that clearly indicates that clearing vegetation, excavation, placement of fill, dumping yard waste, and fertilizer/pesticide applications are prohibited within the protected mitigation area.
- c) The 2004 Washington State Wetlands Rating System shall be applied to the mitigation area at the end of the 10-year monitoring period to determine the mitigated wetland category.
- d) The mitigated wetland shall be delineated using the 1997 Washington State Wetlands Identification and Delineation Manual (or as updated) at the end of the 10-year monitoring period to determine the actual area of wetlands created and enhanced.

9. South Church LLC shall provide notice to Ecology's Susan Meyer, Shorelands and Environmental Assistance Program at 425-649-7168 or e-mail sune461@ecy.wa.gov at least three (3) days prior to the start of placing fill in wetlands or other waters of the state.
10. This Order does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
11. 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.
12. 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.

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.

Appeal Process:

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608.

In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

DATED: April 7, 2006 at Bellevue, Washington.



Geoff Tallent
Section Supervisor
Shorelands and Environmental Assistance Program