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

October 6, 2006

REGISTERED MAIL
RB 670 437 911 US

Smokey Point Blvd., LLC
Attn: Bob Riemenschneider
895 SW 23rd Street
Redmond, OR 97756

RE: Water Quality Certification Order #3844 for U.S. Army Corps of Engineers (Corps) Reference #200501065, Fill Approximately 2.2 Acres of Wetlands, Near Marysville, Snohomish County, Washington

Dear Mr. Riemenschneider:

On September 8, 2005, you submitted a Joint Aquatic Resources 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 proposed wetland fill project. A revised JARPA was submitted to Ecology for the project on March 28, 2006. The project proposes to fill approximately 2.2 acres of wetlands in order to construct commercial and residential structures. The U.S. Army Corps of Engineers issued a joint public notice on May 22, 2005, for the proposed project.

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.

On May 30, 2006, Smokey Point Blvd. LLC, submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with Smokey Point Blvd. LLC's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon Smokey Point Blvd. LLC's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.

This letter also serves as the State response to the Corps of Engineers' May 22, 2005, Public Notice.

If you have any questions, please contact Rebekah Padgett at 425-649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Geoff Tallent
Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:rrp:cja

Enclosure

cc: Susan Glenn, U.S. Army Corps of Engineers
Scott Luchessa, Ecological Solutions, Inc.
Cheryl Dungan, City of Marysville
Penny Keys – HQ
Loree' Randall – HQ
Paul Anderson, Ecology

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Smokey Point Blvd., LLC in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)))))))	**ORDER #3844** **Corps Reference No. #200501065** Fill Approximately 2.2 Acres of Wetlands, Near Marysville, Snohomish County, Washington.

TO: Smokey Point Blvd., LLC
Attn: Bob Riemenschneider
895 SW 23rd Street
Redmond, OR 97756

On September 8, 2005, you submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A revised JARPA was submitted to Ecology for the project on March 28, 2006. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on May 22, 2005.

The project proposes to fill approximately 2.2 acres of wetlands in order to construct commercial and residential structures. These impacts will be compensated for on site by restoring 3.3 acres of depressional wetlands and enhancement of 2.6 acres of wetland buffer and 5 acres of Smokey Point Channel buffer. The project site is located west of Marysville, north of 152nd Street NE and east of Smokey Point Boulevard, Sections 28 and 33, Township 31 North, Range 5 East, WRIA #7.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, 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, 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 Smokey Point Blvd., LLC, and their 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: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #3844 and Corps Reference #200501065.

A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on March 28, 2006. The Applicant will be out of compliance with this Order and must reapply with an updated application 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 US Army Corps of Engineers does not issue an individual 404 permit.

A6. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

A7. 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.

A8. 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.

A9. 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.

A10. 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.

A11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.

A12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars ($10,000) per violation for each day of continuing noncompliance.

B. Water Quality

B1. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification

shall absolve the Applicant from liability for contamination and any subsequent cleanup or surface waters or sediments occurring as a result of project construction or operations.

C. Project Mitigation for Wetlands:

C1. The filling of approximately 2.2 acres of wetlands (approximately 2 acres of wetland ditch, Wetland C, and Wetland D) in order to construct commercial and residential structures shall be mitigated through on-site restoration of 3.3 acres of depressional wetlands and enhancement of 2.6 acres of wetland buffer and 5 acres of Smokey Point Channel buffer. These measures are described in the following document, except as modified by this Certification and Order, and including any approved revisions:

a. *Final Revised Wetland Mitigation Plan for the Smokey Point Master Plan, Marysville, Washington,* 7 August 2006, prepared by Ecological Solutions, Inc.

C2. In addition to mitigation measures described in the above-referenced documents, the following requirements shall be conditions for all mitigation sites:

a. Timing: The wetland mitigation plan shall be implemented either before or concurrently with commercial development impacting wetlands or during the first appropriate planting time following the site construction for the development. In no case should this be more than six (6) months after authorized wetland impacts occur.

b. Record Report and Drawings: A report documenting the final design of the mitigation project areas shall be prepared when site construction and planting is completed. The report shall include the following:

- Vicinity map showing site access;
- Drawings that clearly identify the boundaries of the mitigation areas;
- The installed planting scheme showing densities, sizes, and locations of plants, as well as plant sources and the time of planting;
- Photographs of the area taken from permanent reference points;
- Locations of photo-points, sampling and monitoring sites; and
- An analysis of any changes to the mitigation plan that occurred during construction.

Two copies of the Record Report shall be sent to Ecology's 401/CZM Federal Project Manager within 60 days of completing construction, and in no case later than November 30, 2007, unless approval is obtained in advance from Ecology. The project monitoring period shall commence with Ecology's acceptance of the Record Report.

c. Field Supervision: The wetland mitigation implementation shall be field-supervised by a qualified wetland ecologist to ensure that plants are appropriately placed.

d. Permanent Protection: The Applicant shall provide documentation showing the means of permanent protection for the mitigation sites (such as a property deed showing City ownership, conservation easement or similar) to Ecology's 401/CZM Federal Project Manager within 60 days of completing construction, and in no case later than November 30, 2007, unless approval is obtained in advance from Ecology.

e. Performance Standards: The performance standards for the wetland mitigation shall be as listed in the *Final Revised Wetland Mitigation Plan for the Smokey Point Master Plan, Marysville, Washington* (Mitigation Plan). The performance standards specify how the goals and objectives of the mitigation plan are to be measured. The Mitigation Plan details four (4) performance standards for wetland creation and restoration areas and three (3) performance standards for buffer enhancement areas.

f. Monitoring: Monitoring to ensure that the project performance standards are met shall be performed as described in the Mitigation Plan. In addition, all mitigation monitoring shall take place over a period of ten (10) years, in years 1, 2, 3, 5, 7 and 10. **Two (2) copies of all monitoring reports shall be submitted to Ecology's 401/CZM Federal Project Manager at 3190 – 160th Avenue SE, Bellevue, WA, 98008-5452.**

g. Maintenance: Maintenance of the wetland mitigation sites is necessary to ensure that the required performance standards are met. Maintenance shall be performed as described in the Mitigation Plan. Irrigation will be necessary from June through mid-October and during periods of below average rainfall in the spring for the first two (2) years following plant installation.

h. Contingency Measures: The Applicant is responsible for the success of the mitigation measures. Contingency measures described on page 31 of the Mitigation Plan shall be implemented as soon as monitoring shows that one or more performance standards have not been met.

i. Year 10 Delineation: 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.

j. Year 10 Rating: 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 classification and rating of the created wetlands.

D. Construction

D1. Prior to clearing and grading in or near wetlands, the wetlands to remain undisturbed shall be protected from construction impacts. Bright orange construction fencing shall be installed prior to site clearing to mark the edge of the existing wetlands and stream channels to be protected. All project staff shall be trained to recognize the construction fencing that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be altered.

D2. Construction Stormwater and Erosion Control: Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (*e.g.*, a perimeter erosion control silt fence, etc.), shall be in place before starting clearing, filling, and grading work at the site.

D3. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.

D4. 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.

D5. The Applicant shall obtain and comply with the Construction Stormwater General Permit for this project.

E. Emergency/Contingency Measures

E1. The Applicant shall develop a spill prevention and containment plan for all aspects of this project.

E2. The facility 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.

E3. 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.

E4. 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.

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 401/CZM Federal Project Manager at (425) 649-7129 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.

E5. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.

F. Timing Requirements

F1. This Order is valid until all compliance requirements in this document have been met.

G. Notification Requirements

G1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction, and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #200501065, Order #3844 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

H. 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 October 6, 2006 at Bellevue, Washington.

Geoff Tallent, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

SMOKEY POINT BLVD., LLC
Water Quality Certification Order #3844

Statement of Understanding of
Water Quality Certification Conditions

I have read and understand the conditions of Order #3844 Section 401 Water Quality Certification for the Smokey Point Blvd., LLC Project. I have also read and understand all permits, plans, documents, and approvals associated with the Smokey Point Blvd., LLC Project referenced in this order.

_____ _____
Signature Date

_____
Title

_____
Company