



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000
October 3, 2007

REGISTERED MAIL
RB 670 439 299 US

Horizon Development Corporation
2425 E Bakerview Road
Bellingham, WA 98226

RE: Water Quality Certification Order #5105 for U.S. Army Corps of Engineers (Corps)
Reference #NWS-2006-1424-NO, Horizon Development Corporation, Whatcom County,
Washington

Dear Sir or Madam:

On March 8, 2007, Horizon Development Corporation 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 Horizon Development project. The Corps issued a Nationwide Permit #39, Residential, Commercial, and Institutional Developments for the project on February 22, 2007. The project proposes place fill into 0.49 acres of wetland for the construction of multi-family residences and a commercial/retail center with some office space on the 36.2-acre site near Birch Bay, Whatcom County. An additional 0.70 acres of wetland will receive indirect impacts due to their close proximity to the development footprint. The applicant will mitigate for fill placed in wetlands on-site by rehabilitation of 0.87 acres of degraded emergent wetland, creation of 1.45 acres of wetland, and 2.37 acres of buffer enhancement. During review of the project and the NWP, Ecology determined that an individual Section 401 water quality certification would be required. Ecology issued a public notice pursuant to the provisions of 33 U.S. C. 1341 (FWPCA §401) on August 15, 2007.

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. Please read and understand these conditions and have the certification on-site at all times during construction.

On June 26, 2007, Horizon Development Corporation 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 the applicant's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the Federal Water Pollution Control Act.



If you have any questions, please contact Lori Enlund at 425-649-7271. 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:lce:cja

Enclosure

cc: Randel Perry, U.S. Army Corps of Engineers
Petur Sim, David Evans and Associates, Inc.

e-cc: Penny Keys, Ecology HQ
Loree' Randall, Ecology HQ
Susan Meyer, Ecology
Erik Stockdale, Ecology

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF GRANTING A) ORDER #5105
WATER QUALITY) Corps Reference No. #NWS-2006-1424-NO
CERTIFICATION TO) Place Fill Into 0.49 acres of wetland for
HORIZON DEVELOPMENT) Construction of Industrial/Commercial Buildings
in accordance with 33 U.S.C. 1341) and Attendant Facilities, Wetlands, Bellingham,
(FWPCA § 401), RCW 90.48.120, RCW) Whatcom County, Washington. An additional
90.48.260 and Chapter 173-201A WAC) 0.70 acres of wetland will be indirectly impacted.

TO: Horizon Development Corporation
2425 E Bakerview Road
Bellingham, WA 98226

On March 8, 2007, you submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification). The Corps issued a Nationwide Permit #39, Residential, Commercial, and Institutional Developments, for the project on February 22, 2007. During review of the project and the NWP, Ecology determined that an individual Section 401 water quality certification would be required, because proposed wetland mitigation was insufficient to compensate for the 0.49 acres of wetland fill and the indirect impacts to wetlands due to the lack of adequate buffers. A public notice was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on August 15, 2007.

The project proposes to construct multi-family residences and a commercial/retail center with some office space on the 36.2-acre site near Birch Bay, Whatcom County, WA. There are 32 small, Category IV, palustrine emergent wetlands on site, and 0.49 acres of these will be filled during construction. An additional 0.70 acres of wetland will receive indirect impacts due to their close proximity to the development footprint. All wetland impacts will be mitigated on-site with 0.87 acres of wetland rehabilitation, 1.45 acres of wetland creation, and 2.37 acres of buffer enhancement.

The project site is located South of Semiahmoo Parkway and west of Shintaffer Road in unincorporated Birch Bay, Whatcom County, WA. Lat: 48° 55' 55'' Long: 122° 46' 04''

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 Horizon Development Corporation, and his 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 #5105 and Corps Reference #NWS-2006-1424-NO.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on March 8, 2007. 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 does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
- 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 or related aquatic resources, except as specifically provided for in conditions of this Order.
- A11. 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. Project Mitigation for Wetlands:

B1. Approximately 0.49 of palustrine emergent wetlands fill shall be mitigated by: 1) creating 1.47 acres of palustrine scrub-shrub and emergent wetlands, and 2) rehabilitation of 0.87 acres of wetland. These measures are conceptually described in the following documents, except as modified by this Order, and including any approved revisions:

a. Revised Final Wetland Mitigation Plan for the Horizon Village Project (hereafter referred to as the Mitigation Plan), dated June 26, 2007.

B2. In addition to mitigation measures described in the above-referenced document, the following requirements shall be conditions for the mitigation:

a. Final Mitigation Plan: A final grading plan completed by a Professional Engineer and a final planting plan prepared by a Wetland Ecologist shall be submitted to Ecology (see Condition A.2) for review and approval prior to project construction. The final mitigation plan shall also show the approximate proposed location of snags, brush piles, etc on the planting plan map.

b. Fertilizers: The use of fertilizers shall be limited to a small amount of slow release fertilizers within planting holes, and only as needed.

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

d. As-built Report: Submit a final as-built report for the wetland mitigation projects, with drawings, to Ecology (per condition A.2.) within 60 days of completing construction, including planting.

1. Provide one electronic copy on compact disc and one hard copy. Always prominently display the Corps Reference Number, Ecology Docket Number, or both.

2. Include the following information in the as-built report:

i. Final site topography.

ii. Photographs taken from permanent reference points.

iii. Installed planting scheme with quantities, densities, sizes and approximate locations.

iv. Types of habitat features and their locations.

v. Important dates including:

a. When the development project's construction began.

- b. Starting and completion dates of the construction of the compensatory mitigation project including grading and planting of the site.
- vi. Name and contact information for the parties responsible for the mitigation site including the applicant, landowner, and wetland professional on site during construction.
- vii. Description of and reasons for any changes to the plan.
- viii. Description of any problems that occurred during construction.
- ix. List of any follow-up actions needed with a schedule.
- x. Copy of the deed notification.

3. If the mitigation project is not completed within 13 months of the date of this certification Corp Reference #NWS-2006-1424, order #5105, submit a written status report on the mitigation construction. Continue to submit status reports every 12 months until the construction (including planting) of the mitigation is complete and the final as-built report is submitted.

e. Permanent Protection: The Applicant shall provide documentation showing the means of permanent protection for the mitigation site (such as deed restrictions, conservation easement or similar) to Ecology's 401/CZM Federal Project Manager along with the as-built report.

f. Performance Standards: The performance standards for the wetland mitigation shall be as listed in the Mitigation Plan, which details standards for plant survival and plant cover.

g. 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 per Condition A2.**

h. 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.

i. Year 5 Delineation: The mitigated wetlands shall be delineated using the 1997 Washington State Wetlands Identification and Delineation Manual (or as updated) during the 5th year monitoring period to determine the actual area of wetlands created and rehabilitated.

j. Year 10 Rating: The 2004 Washington State Wetlands Rating System (or as updated) 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.

k. Contingency Measures: The Applicant is responsible for the success of the mitigation site. Contingency measures described on page 22 of the Mitigation Plan shall be implemented as soon as monitoring shows that one or more performance standards have not been met.

C. Construction:

- C1. Prior to clearing and grading in or near wetlands, the wetlands to remain undisturbed shall be protected to the extent possible 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.
- C2. 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.
- C3. The Applicant shall obtain and comply with the Construction Stormwater General Permit for this project.
- C4. 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.
- C5. 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.

D. Emergency/Contingency Measures:

- D1. The Applicant shall develop a spill prevention and containment plan for all aspects of this project.
- D2. 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.

- 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.
 - 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.

- D5. 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.

E. Timing Requirements:

- E1. 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

NWS-2006-1424, Order #5105, can take place by telephone to (425) 649-7271 or (425) 649-7000, fax to (425) 649-7098, or in writing.

F. Appeal Process:

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the “date of receipt” of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the “date of receipt” of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). “Date of receipt” is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

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

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Department of Ecology
Northwest Regional Office
Attn: Lori Enlund
3190 160th Avenue SE
Bellevue, WA 98008

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

To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>

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 03, 2007 at Bellevue, Washington.



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

ATTACHMENT A

**Horizon Development Corporation
Horizon Development Project
Water Quality Certification Order #5105**

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

I have read and understand the conditions of Order #5105 Section 401 Water Quality Certification for the Horizon Development Corporation Project. I have also read and understand all permits, plans, documents, and approvals associated with the Horizon Development Corporation Project referenced in this order.

Signature

Date

Title

Company