



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

November 15, 2007

REGISTERED MAIL
RB 670 439 532 US

Mr. Derek Stebner
PO Box 2039
Bellingham, WA 98227

RE: Water Quality Certification Order #5233 for U.S. Army Corps of Engineers (Corps)
Reference #200700013; Place fill into 0.23 acre of wetlands for a multi-family residential
development, City of Ferndale, Whatcom County, Washington.

Dear Mr. Stebner:

On December 22, 2006, 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 above referenced project. The U.S. Army Corps of Engineers issued Nationwide Permit #29, Residential Developments, for the project on May 14, 2007. A Public Notice regarding the request was issued on June 1, 2007 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. Please read and understand these conditions prior to beginning construction.

On July 6, 2007, Big Sky Industries 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 determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon Big Sky Industries' compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.



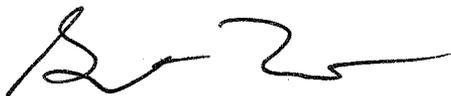
Big Sky Industries

November 15, 2007

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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
Jason Kapchinske, The Jay Group
Tom Bennett, Bennett Engineering
Desiree Douglass, Douglass Consulting

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF GRANTING A) ORDER #5233
WATER QUALITY) Corps Reference No. #200700013
CERTIFICATION TO) Place Fill into 0.23 Acre of Wetlands to facilitate
Derek Stebner) the construction of a multi-family residential
in accordance with 33 U.S.C. 1341) development in the City of Ferndale, Whatcom
(FWPCA § 401), RCW 90.48.120, RCW) County, Washington.
90.48.260 and Chapter 173-201A WAC)
)
)

TO: Mr. Derek Stebner
PO Box 2039
Bellingham, WA 98227

On December 22, 2006, 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 above referenced project. The U.S. Army Corps of Engineers issued Nationwide Permit #29, *Residential Developments*, for the project on May 8, 2007. A Public Notice regarding the request was issued on June 1, 2007 for the proposed project.

The project involves the construction of 46 townhomes and 6 flats, utilities, access roads, and parking. The work includes placement of fill in 0.23 acre of wetlands and temporary buffer impacts near Schell Creek, a tributary to the Lummi River. These impacts will be compensated for by:

- Creating 0.117 of wetlands along the boundary of an existing wetland,
- Removing reed canarygrass in protected wetlands and the Schell Creek corridor,
- Enhancing an existing wetland on site, and
- Enhancing the Schell Creek corridor with native trees and shrubs.

A total of 0.98 acres of wetland and riparian habitat will be enhanced and/or created on site.

The project site is located at 2325 Hendrickson Road, City of Ferndale, Whatcom County, WA. Section 19, Township 39N, Range 02E, WRIA 01.

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 Derek Stebner and its 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 #5233 and Corps Reference #200700013.

- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on December 22, 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 and project addendum 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 the mitigation site 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 Wetland Impacts:

- B1. This project proposes to place fill in 0.23 acre of Category IV emergent wetlands. Compensatory mitigation for these wetland impacts will be provided as stated in the Final Wetland Mitigation Plan, Ferndale Village Development, dated December 2006, including the revised design, which is shown on the revised plan sheets, M-1 through M-5, dated November 1, 2007.

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

- a. Fertilizer: Only minimal amounts of slow-release fertilizer shall be used on the mitigation site and only within planting holes, as needed.
- b. Timing: Site preparation and plant installation described in the Mitigation Plan and Supplemental Mitigation Plan shall be done concurrent with wetland impacts on the project sites.
- 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 project, with drawings, to Ecology (per condition A2) within 60 days of completing construction, including planting.

1. Provide one (1) electronic copy on compact disc and one (1) hard copy. Always prominently display the Corps Reference Number and Ecology Order Number.

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 (snags, rootwads, etc.) 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 of 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.
- e. Permanent Protection: The Applicant shall provide documentation showing the means of permanent protection for the mitigation site (such as a deed restriction, conservation easement, or similar instrument) 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 Final Wetland 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 and Supplemental Mitigation Plan. 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 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 enhanced wetlands.
- j. Contingency Measures: The Applicant is responsible for the success of the mitigation site and the maintenance of existing functions of wetlands to remain on the development site. Contingency measures described on pages 5-5 and 5-6 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 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. 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.
- C4. 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. Stormwater Management Condition:

- D1. 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 Requirement:

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

G. Reporting and Notification Requirement Conditions

- 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 #200700013, Order #5233 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

G. 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: Federal Permit Coordinator
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 November 15, 2007 at Bellevue, Washington.



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

ATTACHMENT A

**Derek Stebner
Ferndale Village
Water Quality Certification Order #5233**

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

I have read and understand the conditions of Order #5233 Section 401 Water Quality Certification for Ferndale Village. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company