



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

September 26, 2007

**REGISTERED MAIL**  
**RB 670 439 268 US**

Watertree Place, LLC,  
c/o Paul Krakow  
One Pacific Building  
621 Pacific Avenue, Suite 300  
Tacoma, Washington 98402-4611

**RE:** Water Quality Certification Order #4786 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers (Corps) Reference #200700146 to Fill 0.19 Acre of Wetland for the Proposed Watertree Place PUD Residential Development, City of Kent, King County, Washington

Dear Mr. Krakow:

On April 25, 2007 the Washington State Department of Ecology (Ecology) received a Joint Aquatic Resources Permit Application (JARPA) from Watertree Place, LLC. (Watertree Place) requesting a Section 401 Water Quality Certification (Certification). Pursuant to Chapter 173-225 WAC a public notice regarding the request for Certification was issued on July 6, 2007.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the JARPA submitted on April 25, 2007, and in the public notice (July 6, 2007) 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 April 30, 2007, Watertree Place 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 Watertree Place's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon Watertree Place's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.



If you have any questions, please contact Cynthia Walcker, Federal Permit Coordinator at (425) 649-4318, [cynt461@ecy.wa.gov](mailto:cynt461@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Geoff Tallent  
Northwest Regional Office  
Shorelands and Environmental Assistance Program

GT:csw:cja

Enclosure

cc: Amy Klein, U.S. Army Corps of Engineers  
Ann M. Olsen, Talasaea Consultants, Inc.

e-cc: Penny Keys – Ecology, HQ  
Loree' Randall – Ecology, HQ  
Erik Stockdale, Ecology, NWRO

**IN THE MATTER OF GRANTING A ) ORDER #4786**  
**WATER QUALITY ) Corps Reference No. 200700146**  
**CERTIFICATION TO: )** Fill 0.19 Acre of Wetland Adjacent to Mill Creek  
**Watertree Place, LLC. in accordance )** for a Proposed Residential Development  
**with 33 U.S.C. 1341 (FWPCA § 401), )** Including 42 Townhomes. Perform On-Site  
**RCW 90.48.120, RCW 90.48.260 and )** Compensatory Wetland Mitigation for Impacts to  
**Chapter 173-201A WAC )** Wetlands by Creating 0.59 Acre of Wetland and  
**)** Enhancing Approximately 2.36 Acres of  
**)** Wetland, City of Kent, King County,  
**)** Washington.

TO: Watertree Place, LLC,  
c/o Paul Krakow  
One Pacific Building  
621 Pacific Avenue, Suite 300  
Tacoma, Washington 98402-4611

On April 25, 2007, the Washington State Department of Ecology (Ecology) received a Joint Aquatic Resources Permit Application (JARPA) from Watertree Place, LLC (Watertree Place) requesting a Section 401 Water Quality Certification (Certification). Pursuant to Chapter 173-225 WAC a public notice regarding the request for Certification was issued on July 6, 2007.

The proposed Watertree Place PUD residential development will occur on 4.1 acres of an undeveloped 8.48-acre parcel. The remaining 4.4 acres will be retained as sensitive-area open space. The project proposes to fill 0.12 acre of a Category IV palustrine emergent wetland and 0.07 acre of a Category III palustrine forested and emergent wetland to construct 42 townhome-style residential lots with associated road, infrastructure, and open-space tracts. Indirect impacts would affect an additional 0.40 acre of Category III and IV wetlands onsite and offsite. Impacts to wetlands will be compensated for on-site by creating 0.59 acre of forested, scrub-shrub, and emergent wetlands and enhancing approximately 2.36 acres of existing emergent wetlands.

The site is located on the northwest corner of the intersection between South 238<sup>th</sup> Street and 64<sup>th</sup> Avenue South in the City of Kent, King County, Washington. The site lies in Section 14, Range 4 East, and Township 22 North. The site is bordered on the north by a Native Growth Protection Area tract, along the south by an unimproved right-of-way for South 238<sup>th</sup> Street, on the east side by a mobile home park, and to the west by single family residences. The site is located within the Duwamish/Green Watershed (WRIA 9).

**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 Watertree Place, LLC, 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 Permit Coordinator, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #4786 and Corps Reference #200700146.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on April 25, 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 shall be rescinded if the Corps of Engineers does not issue a Section 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. Conditions for Construction Activities**

- B1. The Applicant shall obtain and comply with the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit for this project.
- B2. The project shall be clearly marked/staked prior to commencing any construction activities. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Sensitive areas to be protected from disturbance shall be delineated and marked with brightly colored construction fence, so as to be clearly visible to equipment operators. All project staff shall be trained to recognize construction fencing that identifies sensitive areas boundaries (wetlands, streams, riparian corridors, etc.). Equipment shall enter and operate only within the delineated clearing limits, corridors and stockpile areas.
- B3. 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. Additionally, erosion control devices shall be maintained, so as to be effective throughout construction.
- B4. 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.
- B5. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters.
- B6. The Applicant shall dispose of materials removed from the site at an established disposal site.

## **C. Clean Fill Construction Conditions**

- C1. The use of imported fill may result in impacts to wetlands or other waters of the state. To minimize potential impacts, the Applicant shall use clean fill that does not contain toxic materials in toxic amounts.

## **D. Wetland Conditions**

- D1. The project involves filling 0.12 acre of a Category IV palustrine emergent wetland and 0.07 acre of a Category III palustrine forested and emergent wetland in order to construct 42 townhome-style residential lots with associated roads and infrastructure. Wetland impacts shall be mitigated on-site through wetland creation and restoration, through enhancement of existing emergent wetlands, and through enhancement of wetland buffers. Indirect impacts would affect an additional 0.40 acre of Category III and IV

wetlands onsite and offsite. These measures are described in the following documents, except as modified by this Order, and including any approved revisions:

- a. *Final Wetland Mitigation Plan, Watertree Place PUD, Kent, Washington, July 7, 2006 (revised 11 April 2007), prepared by Talasaea Consultants, Inc. (Mitigation Plan).*
- b. *Revised Addenda to Final Wetland Mitigation Report by Talasaea Consultants, Inc., July 11, 2007 (Addenda).*
- c. E-mail exchange of July 11, 2007, between Richard Robohm of Ecology and Ann Olsen of Talasaea Consultants, Inc., re Performance Standard B.

D2. In addition to mitigation measures described in the above-referenced document, the following requirements shall be conditions for all mitigation sites:

- a. Timing: The wetland mitigation plan shall be implemented either before or concurrently with construction of the townhouses, roads, and associated infrastructure that impact wetlands, and planted during the first appropriate planting season following any required grading of the mitigation areas. In no case should planting be delayed more than nine 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 and no later than December 1<sup>st</sup> of the year construction is completed. The report shall include the following:
  - Indicate type of report (as-built or monitoring);
  - Name of project;
  - Federal reference number;
  - Date of the report;
  - 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 Coordinator within 60 days of completing construction, and prior to December 1<sup>st</sup> of the year construction is completed, 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:
  - I. The wetland mitigation implementation shall be field-supervised by a qualified wetland ecologist to ensure that plants are appropriately installed.
    - 1. The supervising wetland ecologist shall conduct a preconstruction meeting with construction personnel.
- 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 instrument) to Ecology's 401/CZM Federal Project Coordinator within 60 days of completing construction, and in no case later than December 31, 2007, unless approval is obtained in advance from Ecology.
- e. Performance Standards: The performance standards for the wetland mitigation shall be as listed in Section 4.1 of the Mitigation Plan as amended by the July 11, 2007, Addenda and the e-mail exchange on the same date between Ecology and Talasaea Consultants, Inc., regarding Performance Standard B.
- f. Monitoring: Monitoring to ensure that the project performance standards are met shall be performed as described in Section 6.0 of the Mitigation Plan, and monitoring reports shall include the elements described there. Mitigation monitoring shall take place over a period of ten years, in years 1, 2, 3, 5, 7 and 10, or, if more frequent, as described in Section 6.0. **Two copies of all monitoring reports shall be submitted to Ecology's 401/CZM Federal Permit Coordinator at 3190 – 160<sup>th</sup> 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 Section 7.0 of the Mitigation Plan. Irrigation will likely be necessary from June through mid-October and during periods of below average rainfall in the spring for the first two years following plant installation.
- h. Contingency Measures: The Applicant is responsible for the success of the mitigation measures. Contingency measures are described in Section 7.0 of the Mitigation Plan. Contingency measures 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.

#### **E. Timing Requirements**

- E1. This Order is valid until all compliance requirements in this document have been met.

#### **F. Notification Requirements**

- F1. The Applicant shall notify Ecology's 401/CZM Federal Permit Coordinator at (425) 649-4318 or (425) 649-7000, fax (425) 649-7098, or in writing, referencing Corps Reference #200700146, Order #4786.
  - a. at least seven (7) days in advance of the pre-construction meeting.
  - b. at least three (3) days prior to the start of construction at the project site.
  - c. within 14 days after completion of construction at the project site.

#### **G. Emergency/Contingency Measures**

- G1. The Applicant shall develop a spill prevention and containment plan for all aspects of this project.
- G2. 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.
- G3. 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.
- G4. 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 Permit Coordinator at (425) 649-4318 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.

- G5. 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.

#### **H. Appeal Process**

You have a right to appeal this Order. To appeal this Order 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  
P.O. 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:**

Cynthia Walcker, Federal Permit Coordinator 401/CZM  
Department of Ecology  
Northwest Regional Office  
3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008-5452

*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 SEPTEMBER 26, 2007 at Bellevue, Washington.



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

**ATTACHMENT A**

**WATERTREE PLACE PUD  
Water Quality Certification Order #4786**

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

I have read and understand the conditions of Order #4786 Section 401 Water Quality Certification for the Watertree Place PUD Development Project. I have also read and understand all permits, plans, documents, and approvals associated with the Watertree Place PUD Development Project referenced in this order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company