



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

December 13, 2007

REGISTERED MAIL
RB 670 357 630 US

Olympic View Marina LLC
Attn: Eric Reichelt
PO Box 80452
Seattle, WA 98108

Dear Mr. Reichelt:

RE: Water Quality Certification Order #5227 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers Reference #200600810, Olympic View Marina Redevelopment Project, Hood Canal, Seabeck, Kitsap County, Washington

On October 19, 2006, Olympic View Marina LLC 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 (CWA) for the proposed Olympic View Marina Redevelopment project. The Corps issued a joint public notice for a Section 404 and Section 10 Permit on November 21, 2006, for the proposed project. A request to withdraw and re-apply for a 401 Certification was submitted on September 24, 2007, and Ecology issued a public notice for the re-application on October 3, 2007.

The project includes installation of 72,510 square feet of structures (1.66 acres of overwater coverage) and up to 250 steel piling for the moorage of approximately 200 boats.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the October 19, 2006, JARPA and the November 21, 2006, 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.

Olympic View Marina, LLC

December 13, 2007

Page 2 of 2

If you have any questions, please contact Rebekah Padgett at (425) 649-7129 or email at rp461@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:rrp:cja

Enclosure

cc: Amy Klein, U.S. Army Corps of Engineers
David Molenaar, Washington Department of Fish and Wildlife
Lindie Schmidt, WA Department of Natural Resources
Shirley Burgdorf, U.S. Fish and Wildlife Service
Mark Toy, Washington Department of Health
David Greetham, Kitsap County Department of Community Development
Ann Farr
David Pierce, P|N|D Engineers, Inc.
Ron Lewis
Barbie's Seabeck Café
Kitsap County Public Works

e-cc: Penny Keys – HQ
Loree' Randall – HQ
Sandra Lange – NWRO
Brad Helland – NWRO
Raman Iyer – NWRO
Jon Day jonloannaday@wavecable.com
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Billy and Barbie Mills seabeckstorecafe@yahoo.com

IN THE MATTER OF GRANTING A) ORDER #5227
WATER QUALITY) Corps Reference No. 200600810
CERTIFICATION TO) Olympic View Marina Redevelopment; Hood
Olympic View Marina LLC) Canal, Seabeck, Kitsap County, Washington.
in accordance with 33 U.S.C. 1341)
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Olympic View Marina LLC
Attn: Eric Reichelt
PO Box 80452
Seattle, WA 98108

On October 19, 2006, Olympic View Marina LLC submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on November 21, 2006. A request to withdraw and re-apply for a 401 Certification was submitted on September 24, 2007, and Ecology issued a public notice for the re-application on October 3, 2007.

The proposed marina redevelopment project includes:

- Installation of a new 16-foot-wide fixed floating concrete breakwater. The breakwater will have two wings that are 493- and 512 feet long, and will be held in place by 24 steel piling.
- Replacement of the main approach dock and floats. The existing wooden piers, floats, gangways, moorage floats, and associated structural wood piling will be removed. A new 16-foot by 175-foot concrete main approach dock, new steel gangways, concrete approach floats, and concrete finger float systems will be installed (including 12 30-foot floats, 63 40-foot floats, and 18 50-foot floats).
- Replacement and upgrade of marine services and support facilities, including:
 - A new concrete pumpout float and sewage lines that will be connected to a new 5,000-gallon sanitary storage tank at the shoreward end of the new main approach dock and under the parking area.
 - Installation of a new fuel float system off the northeast end of the floating breakwater, including float, pile, hoses, pumps, and an operator shack.
 - Construction of two office and marina services buildings to replace existing structures.
 - Removal of an existing aboveground fuel storage tank adjacent to the main approach pier and installation of two new 3,000-gallon underground fuel storage

tanks (gasoline and diesel) under the new temporary parking and loading area in the uplands. The new underground storage tanks will be connected to the new fuel float via underground pipes.

- Upgrade and relocation of underground utilities servicing upland areas as necessary.
- Removal of broken concrete pile and rubble in intertidal areas and repair/replacement of shoreline stabilization. Approximately 222 cubic yards of broken concrete pile and rubble will be removed from the intertidal areas. Approximately 250 feet of new sheet pile wall will be installed in the upper intertidal, with approximately 55 cubic yards of cobble rocks placed within a trench at the toe of the sheet pile wall. Approximately 17 cubic yards of compacted fill will be placed above the sheet pile wall. Low-lying vegetation will be planted along the top of the new shoreline stabilization.
- Improvements to shoreline public access and construction of pedestrian access, including a sidewalk for marina users.
- Improvements to parking, vehicle circulation, and access, including a new temporary parking and turnaround area adjacent to the new main approach pier, reconfiguration of existing parking areas, and widening and improvements to the Seabeck Highway shoulder right of way.

Approximately 320 creosote-treated piles will be replaced with a total of approximately 250 steel piles ranging from 14 to 20 inches in diameter. The new marina will result in an overall reduction in overwater coverage in the nearshore environment of approximately 10,500 square feet from existing conditions.

The project is located at 15376 Seabeck Highway W., Seabeck, Kitsap County, Washington, along Hood Canal, in Section 20, T. 25 N., R. 1 W., WRIA 15.

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 Olympic View Marina 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 Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #5227 and Corps Reference #200600810.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on October 19, 2006, and the revised site plans dated June 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 U.S. Army Corps of Engineers does not issue an individual 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. Water Quality Conditions:

- B1. This Order does not authorize a temporary turbidity exceedance beyond the limits established in WAC 173-201A-210(1)(e)(i) for Hood Canal. 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.
- B2. In-Water Construction Water Quality Sampling and Monitoring: An in-water construction Water Quality Monitoring Plan shall be developed and implemented. "In-water construction" is defined as all work below the ordinary high water mark of Hood Canal. Ecology may require changes and modifications to the Plan. The Plan shall include the following minimum requirements:

- a. Locations of samples: Locations of water quality sampling sites shall be identified and described in the plan and on a map of the project area. At a minimum, sampling shall take place at the point of compliance as specified in WAC 173-201A-210(1)(e)(i), which allows a 150-foot temporary mixing zone for turbidity resulting from disturbance of in-place sediments in Hood Canal. Background samples shall be collected outside the area of influence of the inwater work. Background samples shall be collected at the same frequency as the point of compliance samples.
- b. Number of samples: Samples shall be collected a minimum of one (1) time per day through the first four (4) days of each in-water construction activity. Subsequent sampling is dependent on monitoring results, but shall be a minimum of one (1) time per week during in-water activity if no exceedances are detected. Additional sampling may be required if turbidity exceedances are observed or measured to be above the temporary mixing zone criteria of WAC 173-201A-210(1)(e)(i).
- c. Parameter to be sampled: Turbidity shall be sampled for this project.
- d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.
- e. Detection of exceedances: Water quality standards for turbidity in "Extraordinary Quality" waters are as follows: turbidity shall not exceed 5 NTU over background conditions when the background is 50 NTU or less, or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. If exceedances of this standard at the point of compliance specified in WAC 173-201A-210(1)(e)(i) are detected through water quality sampling and monitoring, the Applicant shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, the Applicant shall assess the efficacy of the site Best Management Practices (BMPs) and update or improve the BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity exceedance.
- f. Reporting: If no exceedances are detected, results of water quality sampling, as determined by the Water Quality Protection Plan, shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.
- g. Notification of exceedances: Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #5227, Attn: 401/CZM Federal Project Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:

- i. A description of the nature and cause of non-compliance, including the quantity and quality of any unauthorized discharges;
- ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance; and
- iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
- iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, photographs, and any other pertinent information.

B3. Notification of exceedances: Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #5227, Attn: 401/CZM Federal Project Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:

C. Project Mitigation Conditions:

- C1. The Applicant shall avoid eelgrass beds during construction. Placement of derrick anchors (or spuds) in areas designated as eelgrass beds is prohibited. Eelgrass beds shall not be shaded for more than three (3) consecutive days during peak growing times (i.e., May through August).
- C2. Prior to initiating construction activities, a qualified consultant shall mark the edge of the eelgrass habitat with temporary buoys within the barge work corridors.
- C3. The Applicant shall minimize the number of barge trips into the shoreline area in order to prevent propeller scour and impacts to eelgrass, kelp, and benthic habitat.
- C4. In areas with kelp, eelgrass, or macroalgae populations, vessel operation shall be restricted to tidal elevations adequate to prevent grounding of the barge.
- C5. If kelp, eelgrass, or macroalgae beds are present, vessel operation shall be restricted to tidal elevations adequate to prevent propeller-related damage to vegetation.
- C6. Minimal propulsion power shall be used when maneuvering barges between Mean Lower Low Water (MLLW) and the -16.0 tidal elevation (MLLW=0.0) for the protection of eelgrass habitat.

D. Conditions for In-Water and Over-Water Construction Activities:

General Conditions:

- D1. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- D2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- D3. Work shall be accomplished per the best management practices described on pages 30-31 of the *Olympic View Marina Biological Evaluation*, prepared by Grette Associates, LLC, dated June 2006, revised January 2007, except as modified by this Order.
- D4. 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.
- D5. All manmade debris removed from the site, including but not limited to the broken concrete pile and rubble in intertidal areas, shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- D6. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- D7. 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.
- D8. Clean Fill Criteria: Applicant shall ensure that fill (clean sand) placed for the proposed project does not contain toxic materials in toxic amounts.

Work in Marine Waters:

- D9. During project demolition or construction, a containment boom and absorbent pads shall be placed around the perimeter of the work area to capture wood debris and other materials released into the waters as a result of construction activities. All accumulated debris shall be collected and disposed of upland at an approved disposal site.
- D10. The Applicant shall use tarps or other containment method when cutting or drilling over water to prevent sawdust and other materials from entering the water.
- D11. During construction, the Applicant shall have a boat available on site at all times to retrieve debris from the water.

- D12. All manmade debris that has been deposited below the Ordinary High Water Line within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete blocks, metal debris, cables, submerged timbers and other debris in the construction work corridor that have washed into marine areas shall be removed from the project area.
- D13. Project activities shall be conducted to minimize siltation of the beach area and bed.
- D14. The Applicant shall operate the barge(s) and tug in deep water so as to minimize nearshore propeller wash impacts such as suspension of nearshore sediments.
- D15. Work shall be completed in the dry whenever possible.
- D16. If cast in place, wet concrete/grout shall be prevented from entering waters of the state. Forms for any concrete/grout structure shall be constructed to prevent leaching of wet concrete/grout. Impervious materials shall be placed over any exposed concrete/grout not lined with the forms that will come in contact with state waters. Forms and impervious materials shall remain in place until the concrete/grout is cured.

Piling Removal Conditions:

- D17. Approximately 320 existing creosote-treated pilings shall be removed from marine waters. All piling shall be removed by vibratory extraction. In the event these pilings break off during extraction, the remaining piling may be cut 2 feet below the mudline with a diver-operated hydraulic saw.
- D18. Piles removed from substrate: the pile shall be moved immediately from the water into the barge or onto uplands. The pile shall not be shaken, hosed-off, left hanging to drip or any other action intended to clean or remove adhering material from the pile.
- D19. Work surface on the barge deck or on uplands shall include a containment basin for piles and any sediment removed during pulling of the piling. Basins may be constructed of durable plastic sheeting with sidewalls supported by hay bales or support structure to contain all sediment.
- D20. The piles shall be disposed of at an approved upland disposal site.

Pile and Sheet Pile Wall Driving:

- D21. The 250 new pilings and the sheet pile wall shall be steel.
- D22. The pilings and sheet pile wall shall be installed using a vibratory hammer whenever possible. An impact hammer may be used to proof piling for the approach dock and the floating breakwater, if needed.

- D23. Proofing pile with an impact driver shall be done during tidal exposure or during low tide in intertidal and shallow subtidal areas whenever possible.
- D24. If an impact hammer is used, a block of wood at least six (6) inches thick shall be placed between the impact pile driver and the pile, or a bubble curtain shall be employed, to minimize in-water noise during installation of steel piles 10 inches in diameter or less. The Applicant shall employ a bubble curtain during installation of steel piles greater than 10 inches in diameter when using an impact hammer. The bubble curtain shall be deployed in a manner to ensure that bubbles completely engulf the piles during the impact driving. If any fish are seen to be in distress, work shall immediately cease and a bubble curtain shall be deployed before the driving is completed.

E. Marina Operations

E1. The Applicant shall implement BMPs as described in the following documents:

- *Olympic View Marina LLC Petroleum Handling and Storage Management Plan*, Olympic View Marina LLC, dated November 29, 2006.
- *Olympic View Marina Emergency and Environmental Management Practices Plan*, dated May 3, 2007.

F. Emergency/Contingency Measures:

- F1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- F2. The Applicant 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.
- F3. 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.
- F4. 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 or spill.
 - 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.

G. Timing Requirements

- G1. This Order is valid until all compliance requirements in this document have been met.
- G2. In-water work shall be subject to timing limitations imposed by WDFW. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

H. Reporting and Notification Requirement Conditions

- H1. 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 #200600810, Order #5227 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

I. 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:

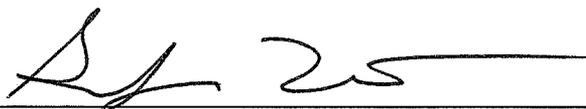
Department of Ecology
Northwest Regional Office
Attn: Rebekah Padgett
3190 160th Avenue SE
Bellevue, WA 98008

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 December 13, 2007 at Bellevue, Washington.



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

ATTACHMENT A

**OLYMPIC VIEW MARINA LLC
OLYMPIC VIEW MARINA REDEVELOPMENT PROJECT
Water Quality Certification Order #5227**

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

I have read and understand the conditions of Order #5227 Section 401 Water Quality Certification for the Olympic View Marina LLC Marina Redevelopment Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company