



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

August 8, 2007

REGISTERED MAIL
RB 252 945 165 US

Atlas Construction, LLC
ATTN: Mr. and Mrs. Tehrani
P.O. Box 837
Warrenton, Oregon 97146

RE: Water Quality Certification Order No. **4423** for Corps Public Notice No. 200500679 to construct road access and develop four residential lots between 7th Street North and 8th Street North in the City of Long Beach, Pacific County, Washington

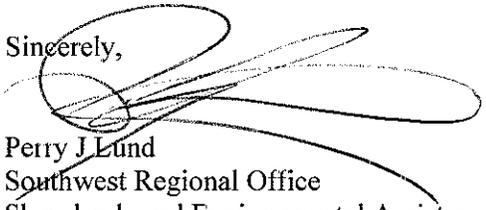
Dear Mr. and Mrs. Tehrani:

On June 16, 2005, Atlas Construction, LLC, submitted a Joint Aquatic Resource 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 road access and residential development in Long Beach. The Applicant withdrew the original application on May 25, 2006. On August 10, 2006, a revised JARPA was submitted to reflect changes that had occurred in the project. The U.S. Army Corps of Engineers issued a public notice on November 1, 2006, 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.

If you have any questions, please contact Lori Ochoa at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Perry J. Lund
Southwest Regional Office
Shorelands and Environmental Assistance Program

PJL:LO:dn
Enclosures

cc: Ron Wilcox, U.S. Army Corps of Engineers
Kaye Simonson, City of Long Beach
Francis Naglich, Ecological Land Services
James and Marilyn Yaun
Mike O'Hara
Jeffrey Eustis



e-cc: Lori Ochoa, Ecology SWRO
Penny Keys, Ecology HQ
Loree' Randall, Ecology HQ
Rick Mraz, Ecology SWRO
Deborah Cornett, Ecology SWRO

IN THE MATTER OF GRANTING A) ORDER # 4423
WATER QUALITY) Corps Reference No. 200500679
CERTIFICATION TO) Construct road access and develop four
Atlas Construction, LLC) residential lots within the city of Long Beach,
in accordance with 33 U.S.C. 1341) Pacific County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)
))
))

TO: Atlas Construction, LLC
ATTN: Mr. and Mrs. Terhani
P.O. Box 837
Warrenton, OR 97146

On June 16, 2005, Atlas Construction, LLC submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. The Applicant withdrew the original request for Certification on May 25, 2006. A revised JARPA was submitted on August 10, 2006. A 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 Chapter 173-225 WAC on November 1, 2006.

The purpose of the project is to provide road access and develop four residential lots between 7th Street North and 8th Street North in the City of Long Beach, Pacific County, Washington, NE Section 17, Township 10 North, Range 11 West, WRIA No. 24, in the Willapa Watershed.

The project will impact 0.35 acres of emergent and scrub-shrub wetlands and 0.60 acres of wetland buffer.

To compensate for wetland impacts, 1.23 acres of on-site coastal dune habitat west of the 1980 Seashore Conservation Line will be preserved in perpetuity as well as 0.88 acres of on-site wetlands and uplands outside the building envelopes within the proposed development lots. Preservation includes vegetative restoration of recently removed trees in the 0.88 acre portion and the establishment of deed restrictions on this and the 1.23 acre area whereby no vegetative removal or management is permitted without Ecology approval. The 0.88 acre portion is also subject to a ten-year monitoring and maintenance requirement. The on-site mitigation will total 2.11 acres of combined preservation. Additional off-site compensation will occur for the wetland and wetland buffer impacts through preservation of 5.0 acres of high quality wetland on the Long Beach Peninsula.

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:

1. For purposes of this Order, the term "Applicant" shall mean Atlas Construction, LLC and its agents, assignees, and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest Regional Office, Attn: Federal Permit Coordinator, SEA Program, P.O. Box 47775, Olympia, WA 98504-7775. Any submittals shall reference Order No. **4423** and Corps No. **200500679**.
3. Work authorized by this Order is limited to the work described in the revised JARPA received by Ecology on August 10, 2006. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.

4. 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.
5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue a Section 404 permit.
6. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation for each day of continuing noncompliance.

B. Wetland Mitigation:

1. Project mitigation shall be constructed and maintained as described in the *Revised Wetland Determination Report and Preliminary Mitigation Plan* for Atlas Construction, LLC, City of Long Beach, Washington revised May 25, 2006, and in the April 27, 2007 Memorandum to the Agencies.
2. Prior to the start of any construction on the site the Applicant shall submit to Ecology for its review and written approval a final wetland mitigation and monitoring plan, which includes any changes or additions required by this Order.
3. No construction associated with this project shall occur until the Applicant provides Ecology the following:
 - A survey and legal description that identifies the 5-acre tract to be preserved; and,
 - A copy of the deed for the preservation tract, which will include the restrictive covenant that the preservation area shall remain undeveloped in perpetuity.
4. Any changes to the mitigation plan must be approved in writing by Ecology before they are incorporated into the plan or implemented on the ground.
5. Compensatory mitigation restoration plantings shall occur prior to or concurrently with project impacts to wetlands.
6. All excess excavated material from the mitigation site shall be disposed of in an appropriate location outside of sensitive area and their buffers and shall be stabilized or contained so as to prevent its entry into waters of the state.
7. No materials shall be stockpiled within the wetlands or stream.
8. All earth areas that have been exposed or disturbed on the mitigation site shall be stabilized to prevent erosions by using mulch or an equivalent such as seeding with a suitable erosion control seed mix consisting of native, non-invasive plant species only.
9. The 0.88 acres restoration and preservation site shall be monitored for a 10-year period following establishment of this site. Additional monitoring of the restoration area may be required by Ecology if wetland monitoring reveals that performance measures are not being met.
10. Wetland restoration monitoring and maintenance shall be implemented and reported as described in the conditions herein and in the attached "Monitoring Report Details" Sheet (Attachment B).
11. The Applicant is responsible for achieving the restoration goals and performance standards as follows: 90% survival of the 200 shore pine and 80 Hooker willow in the restoration area after 10 years. Equal credit will be given for natural recruitment of these two species provided the volunteer species are of equivalent size. Adequate cover of a

forest or shrub canopy after 10 years, as determined by a site inspection by Ecology, may satisfy this condition.

12. Contingency measures shall be implemented as follows:
 - Replanting as needed to assure 90% survival after 10 years.
 - Hand-watering if necessary to ensure survivability.
13. The property owner shall grant Ecology access to the mitigation areas for inspection during the 10 year monitoring period or until mitigation success has been achieved.
14. Deed Restriction for On-Site Mitigation: Permanent protection of the wetland mitigation area and buffers shall be recorded on the property deed for the on-site Wetland Mitigation Site. The deed shall clearly indicate that the wetland mitigation areas are "waters of the state". The deed shall also clearly indicate that any vegetative removal or management is subject to written approval from the Department of Ecology prior to starting said work. Documentation that this requirement has been fulfilled shall be provided to the Southwest Regional Office Federal Permit Coordinator as part of the "as-built" report.
15. Deed Restriction for Preservation Tract: Permanent protection of the wetland preservation area shall be recorded on the property deed. Documentation that this requirement has been fulfilled shall be provided to the Southwest Regional Office Federal Permit Coordinator prior to the start of construction.

C. Wetland Mitigation Reporting Conditions:

1. A detailed "As Built" report shall be prepared after construction of the mitigation areas showing any variances from the final mitigation plan. The "As-Built" shall be the baseline document used for all future monitoring of the mitigation project. It shall include but not be limited to:
 - comments from a wetland specialist present on site during mitigation planting;
 - final site plan showing site topography (both site plan view and typical sections) and clearly indicating the mitigation site boundary;
 - photographs of the area taken from permanent photo points which will be designated on the site plan;
 - the installed planting scheme showing densities, sizes, and approximate locations of plants as well as plant sources and time of planting; and,
 - documentation that the wetland mitigation area and buffers have been recorded on the property deed for the Wetland Mitigation Site.

Two copies of the "as-built" report and drawings shall be sent to Ecology's Southwest Regional Federal Permit Coordinator within 60 days of completing

construction and planting of the mitigation areas, and in no case later than December 31, 2008.

2. Mitigation monitoring reports shall be submitted to Ecology by December 31 of each monitoring year for years 1, 2, 3, 5, 7, and 10 and as further described in Attachment B, Monitoring Report Details

D. Construction Conditions:

1. During project construction the Applicant shall comply with all stormwater requirements within the current NPDES Construction Stormwater General Permit issued for this project.
2. The project area shall be clearly marked/staked prior to construction. Prior to clearing and grading any sensitive areas to remain undisturbed shall be protected from construction impacts. Sensitive areas and buffers that are to be protected from disturbance shall be clearly marked with bright orange construction fencing so as to be clearly visible to equipment operators. Clearing limits, travel corridors and stockpile sites shall be clearly marked. All project staff shall be trained to recognize construction fencing or flagging that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be altered. Equipment shall enter and operate only within the marked clearing limits, corridors and stockpile areas.
3. Appropriate Best Management Practices (BMP's) shall be implemented to minimize track-out during construction.
4. All work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.
5. 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 prior to the start of project construction and shall be maintained throughout construction until the site is stabilized.
6. All debris or deleterious material resulting from construction shall be properly contained and disposed of so that it cannot enter waters of the state.
7. Turbid water generated from construction activities, including turbid de-watering water, shall not be discharged directly to waters of the state, including wetlands. Turbid water shall be routed to an upland location to allow removal of fine sediment and other contaminants. Clean dewatering water that has been tested and confirmed to meet water quality standards may be discharged directly to waters of the state. The discharge outfall method shall be designed and operated so as not to cause erosion or scour in state waters, banks, or vegetation.
8. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters. All fueling areas shall be provided with adequate spill containment. Fueling equipment and vehicles within 50 feet of state waters and wetlands is not allowed.

9. The Applicant shall establish a separate contained area for washing down vehicles and equipment, which does not have any possibility of draining to surface waters and wetlands. Wash water containing sediments, oils, grease, or other hazardous materials resulting from wash down of the work area, tools, and equipment including concrete delivery trucks or other equipment used for concrete work shall not be discharged into state waters or storm drains.
10. All excess excavated material shall be disposed of above the 100-year floodplain and shall be contained so as to prevent its re-entry into waters of the state.

E. Timing:

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

F. Notification Conditions:

1. The Applicant shall provide written notification (FAX, e-mail or mail) to Ecology's Southwest Regional Office Federal Permit Coordinator in writing at least three (3) days prior to the start of construction at the project site.
2. The Applicant shall provide written notification to Ecology's Southwest Regional Office Federal Permit Coordinator in writing within fourteen (14) days after completion of construction.

NOTE: These notifications shall include the Applicant's name, project name, Order No. 4163, Corps Reference No. 200601389, project location, contact and contact's phone number.

G. Emergency/Contingency Measures:

1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project, and shall have spill cleanup materials and an emergency call list available on site
2. 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, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
 - Cease operations that are causing the compliance problem.
 - Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour

of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.

- 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.
- Immediately notify Ecology's Southwest Regional Spill Response Office at (360) 407-6300 and the Washington State Department of Fish and Wildlife of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.
- Submit a detailed written report to Ecology's Federal Permit Coordinator 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.

3. 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, including wetlands.
4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology's Southwest Regional Spill Response Office at 360 407-6300.

H. 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

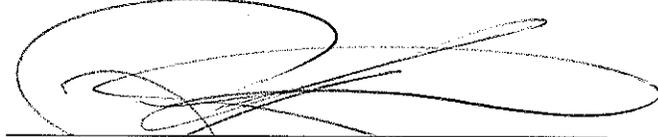
3. And send a copy of your appeal to:

Lori Ochoa
Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775

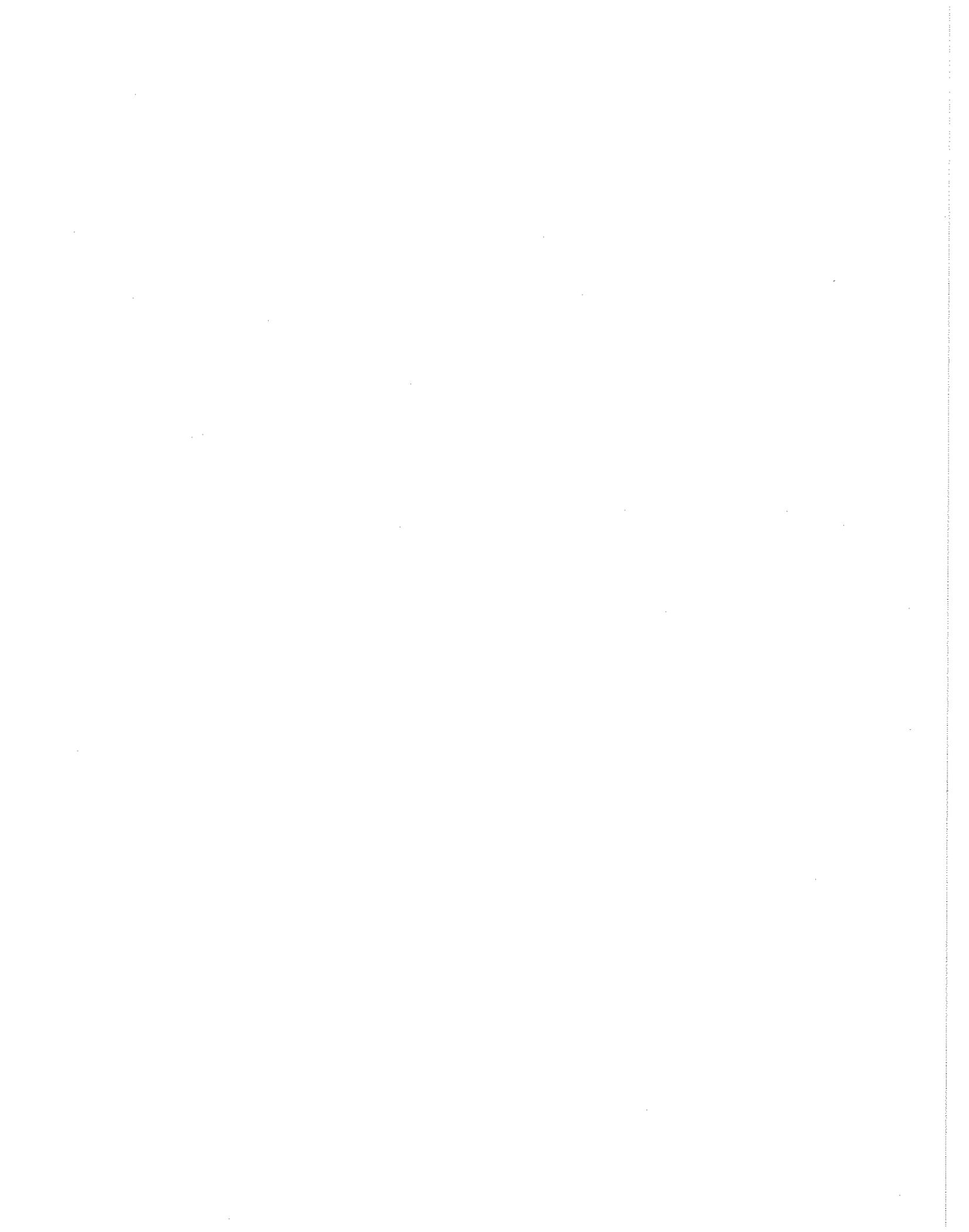
*For additional information visit the Environmental Hearings Office Website. <http://www.eho.wa.gov>
To find laws and agency rules visit the Washington State Legislature Website.
<http://www1.leg.wa.gov/CodeReviser>*

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 this 8 day of AUGUST, 2007 at Lacey, Washington



Perry J Lund, Unit Manager
Shorelands and Environmental Assistance Program
Southwest Regional Office



Attachment # A

Atlas Construction, LLC
Water Quality Certification Order # **4423**

Statement of Understanding
Water Quality Certification Conditions

I, _____, state that, I will be involved as an agent or contractor for Atlas Construction, LLC in the construction of road access and the development of four residential lots between 7th Street North and 8th Street North in the City of Long Beach, Pacific County, Washington. I further state that I have read and understand the relevant conditions of the Washington Department of Ecology Water Quality Certification Order #**4423** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Phone

Company

Attachment # B

Atlas Construction, LLC
Water Quality Certification Order # 4423

Monitoring Report Details

- Project name.
- Associated permit and reference number(s) (assigned by the Corps, Ecology, local government).
- Who prepared the monitoring report (name, address, and phone number).
- Who the monitoring report was prepared for (name, address, and phone number).
- Date of the monitoring report, including the time period for which the monitoring activities occurred.
- Brief description of the development project.
- Location of the development project and directions to the development site(s).
- Date construction of the development project started.
- Area (acres) and type(s) of wetlands affected by the development project. Also briefly describe impacts to other aquatic resources.
- Brief description of the mitigation project.
- Goals and objectives of the mitigation project.
- Location of the mitigation project and directions to the mitigation site(s).
- Date construction of the mitigation site(s) was completed. Specify when different activities were completed (e.g., planting).
- Who completed mitigation site activities (name, address, and phone number).
- Copies of any records of long-term protection (e.g., conservation easement, deed restriction).
- 8 1/2" x 11 map of the mitigation site(s)
- Inset showing the geographic location of the site.
- Landmarks.
- Locations of photographic record stations.
- Summary of management actions (maintenance and contingencies) implemented at the mitigation site(s).
- Summary of monitoring results.
- List of performance standards for the mitigation project.
- Table of monitoring results compared to performance standards for specified target dates.
- Summary of field data taken to determine compliance with performance standards.
- Photographic record of the site from the most recent monitoring visit at record stations (photo pans are required in addition to along transect lines).
- Summary of any problems or significant events that occurred on the site that may affect the ultimate success of the mitigation project.
- Summary of any lessons learned.

