



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

August 17, 2005

REGISTERED MAIL
RB 253 008 505 US

Mr. Tony Gonzalez
Cornerstone Real Estate Group, LLC
23710 NE 191st Court
PO Box 607
Battle Ground, WA 98604

RE: Water Quality Certification Order Number **2573** for Corps Nationwide Permit 39, Residential, Commercial, and Institutional Developments, Reference No. 200200763 for placement of fill in 0.47 of an acre of wetland contiguous to an unnamed tributary to Woodin Creek to construct Phase 1 of the Tuxedo Junction residential development at the northeast corner of Northeast 142nd Avenue and Northeast 11th Street in the City of Battle Ground, Clark County, Washington

Dear Mr. Gonzalez:

The Nationwide Permit 39, issued by the U.S. Army Corps of Engineers on August 25, 2004, and subsequent Public Notice issued by the Department of Ecology on February 17, 2005 for proposed work within wetlands in the City of Battle Ground, Clark County, Washington has been reviewed. On behalf of the State of Washington, we certify that the work proposed in the application for Department of Army Nationwide permit, and Ecology's public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

- 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, Unit Supervisor
Southwest Regional Office
Shorelands and Environmental Assistance Program

PJL:LO:dn
Enclosure

cc: Ron Klump, U.S. Army Corps of Engineers
Michael Lamprecht, U.S. Army Corps of Engineers
Dick Clark, EPA
Steven Hill, Miller Nash LLP
Chuck Smithfield, Cornerstone Real Estate Group, LLC
Scott Morey, MRM Consulting
Brian Carrico, City of Battle Ground
Eric Holmes, City of Battle Ground
Brent Davis, Clark County



IN THE MATTER OF GRANTING) ORDER #2573
A WATER QUALITY) (Corps No. 200200763)
CERTIFICATION TO) Fill 0.47 of an acre of wetlands to construct Phase I of
CORNERSTONE REAL ESTATE) Tuxedo Junction Residential Development in the City of
GROUP, LLC) Battle Ground, Clark County, Washington
in accordance with 33 U.S.C. 1341)
FWPCA § 401, RCW 90.48.260,)
RCW 90.48.120 and WAC 173-201A)

TO: Cornerstone Real Estate Group, LLC
ATTN: Mr. Tony Gonzalez
23710 NE 191st Court
PO Box 607
Battle Ground, WA 98604

ATTN: Mr. Gonzalez:

On August 25, 2004, the U.S. Army Corps of Engineers issued Nationwide Permit 39, and on February 17, 2005, a Public Notice for application of a water quality certification from the State of Washington was distributed by the Department of Ecology (Ecology) for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA§ 401). The proposed project involves placement of fill in wetlands adjacent to an unnamed tributary of Woodin Creek, in the northeast corner of Northeast 142nd Avenue and Northeast 11th Street in the City of Battleground, in Clark County, Washington. The total wetland impacts for Phase 1 of Tuxedo Junction residential development is 0.47 of an acre.

The purpose of this project is to construct a 52-lot residential subdivision with associated infrastructure including streets and sidewalks on a 15-acre project site.

Mitigation for impacts to wetlands will occur off-site in the Dollars Corner area of Mill Creek, which is a tributary of Salmon Creek. Direct impacts to wetlands will be mitigated at a 3:1 ratio for 1.41 acres of wetland creation; indirect wetland impacts will be mitigated at a ratio of 4:1 through enhancement of 12.5 acres of emergent wetland adjacent to the created wetland area and through implementation of the Wetland Mitigation Report At The Offsite Mitigation Location for The Tuxedo Junction Battle Ground, WA (Wetland Mitigation Report) dated June 9, 2004 and as revised on February 11, 2005; April 7, 2005; and June 3, 2005.

For purposes of this Order, the term "Applicant" shall mean Cornerstone Real Estate Group, LLC and its agents, assigns, and contractors.

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 investigated 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. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 302, 303, 306, and 307);

2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; 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 project as proposed and conditioned will meet water quality standards and other applicable requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.260, RCW 90.48.120 and Chapter 173-201A WAC, certification is granted to Cornerstone Real Estate Group, LLC (Applicant) subject to the following conditions:

A. No Further Impairment of Existing Water Quality

- A1. Woodin Creek is a Class A water of the state. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (ch.173-201A WAC) or sediment quality standards (ch. 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(2) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

B. Timing:

- B1. This Order is valid until all compliance requirements in this document have been met.
- B2. The Applicant shall reapply with an updated application if the information contained in the Corps of Engineers Nationwide Permit 39 Authorization, the JARPA submitted on October 22, 2004 and the Department of Ecology Public Notice distributed on February 17, 2005 is voided by subsequent submittal to the federal agency. Any future action at this project location, emergency and/or otherwise, that is not defined in the Public Notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.

C. Notification Conditions:

- C1. The Applicant shall notify Ecology's Southwest Regional Office Federal Permit Coordinator (Lori Ochoa) at 360/ 407-6926, Fax 360/ 407-0284, E-mail loch461@ecy.wa.gov, or mail P.O. Box 47775, Olympia, WA 98504-7775 at least fourteen (14) days prior to the onset of any work on site.
- C2. The Applicant shall notify Ecology's Southwest Regional Office Federal Permit Coordinator within fourteen (14) days after completion of construction.
- C3. The Applicant shall ensure that all appropriate project engineers and contractors at the project and mitigation sites shall 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 no less than seven (7) days before construction begins at the project site.

NOTE: These notifications shall include the Applicant's name, project name, project location, the number of this Order, contact and contact's phone number.

D. Construction Activity Conditions

- D1. The conditions of this Order shall in no way supersede the requirements set in Administrative Order DE 03 WQVA-5665 issued in 2003 by the Southwest Regional Office Water Quality Program. Compliance with Administrative Order DE 03 WQVA-5665 must be achieved before construction may begin on the project site.
- D2. The access road at the off-site wetland mitigation location shall be abandoned and restored once mitigation construction has been completed. Prior to the start of construction at either the project site or the wetland mitigation site, the Applicant shall prepare a plan for the abandonment and restoration of the mitigation site access road. This plan must be submitted to Ecology for approval within sixty (60) days of receipt of this Order. The plan shall be submitted to Ecology's Southwest Regional Office Attn.: Mark Cline at P.O. Box 47775, Olympia, WA 98504-7775.
- D3. The project site shall be clearly marked/staked prior to construction to protect adjacent wetlands from construction impacts. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Sensitive areas and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. 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 filled. Equipment shall enter and operate only within the marked clearing limits, corridors and stockpile areas.
- D4. The Applicant shall comply with the current Construction Stormwater NPDES permit issued for this project.
- D5. Work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.
- D6. Appropriate and effective best management practices (BMPs) shall be installed adjacent to any surface water body on the project site prior to commencing earthwork so as to minimize erosion, turbidity, and other water quality impacts.
- D7. Erosion control devices (e.g., hay bales, detention areas, filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting project construction and shall be maintained throughout construction.
- D8. Appropriate BMPs shall be implemented to minimize track-out during construction at the project site.

- D9. Periodic inspection and maintenance of all erosion control structures shall be conducted no less than every seven (7) days from the start of the project until site stabilization. Additional inspections shall be conducted prior to and after expected rainfall events to ensure erosion control measures are in good working condition. Any damaged structures shall be immediately repaired. If it is determined at the inspection that additional measures are needed to control stormwater and erosion, they shall be implemented immediately.
- D10. All construction debris shall be properly disposed of on land so that it cannot cause water quality degradation to state waters.
- D11. All excess excavated material shall be disposed of in an appropriate location above the 100-year floodplain and shall be stabilized and contained so as to prevent its re-entry into waters of the state.
- D12. At the completion of construction, hydroseeding may be done to stabilize slopes and soils until other required planting is completed. Hydroseed mix shall consist of native, non-invasive, or annual plant species only.
- D13. 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 is not allowed.
- D14. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters. The applicant shall set up a designated area for washing down equipment.

E. Mitigation

- E1. Impacts to aquatic resources shall be mitigated as described in the Wetland Mitigation Report At The Offsite Mitigation Location For The Tuxedo Junction, Battle Ground, WA (Wetland Mitigation Report) dated June 9, 2004 and as revised on February 11, 2005; April 7, 2005; and June 3, 2005.
- E2. Any changes to the mitigation plan must be approved in writing by Ecology.
- E3. Deed Restriction: Permanent protection of the wetland mitigation and preservation areas and buffers shall be recorded on the property deed for the Wetland Mitigation Sites. The deed shall clearly indicate that the wetland mitigation areas are "waters of the state". Documentation that this requirement has been fulfilled shall be provided to Ecology's Mark Cline as part of the "as-built" report.

Mitigation Construction

- E4. Compensatory mitigation construction and installation shall occur prior to, or concurrently with, project impacts to wetlands.
- E5. If an acre or more of soil will be exposed during the mitigation construction, a NPDES Construction Stormwater Permit must be obtained and a Stormwater Pollution Prevention Plan submitted and approved by Ecology's Southwest Regional Office Water Quality Program prior to construction.

- E6. Appropriate and effective BMPs shall be installed adjacent to any surface water body on the mitigation sites prior to commencing earthwork so as to minimize erosion, turbidity, and other water quality impacts.
- E7. All excess excavated material from the mitigation sites shall be disposed of in an appropriate location outside of sensitive areas and their buffers and shall be stabilized or contained so as to prevent its entry into waters of the state.
- E8. No materials shall be stockpiled within the wetlands or streams on the mitigation sites.
- E9. The Wetland Mitigation Report's planting plan shall be field supervised and inspected by a qualified wetland specialist(s) during grading and planting operations, as well as after planting has been completed, to ensure proper installation.
- E10. The boundaries of the mitigation area and buffers shall be permanently marked with stakes at least every 100 feet. The marking shall include signage that clearly indicates that clearing vegetation, excavation, placement of fill, and fertilizer/pesticide applications are prohibited within mitigation areas.
- E11. Appropriate BMP's shall be implemented to minimize track-out during construction at the mitigation sites.
- E12. All earthen areas that have been exposed or disturbed on the mitigation site shall be stabilized to prevent erosion by using mulch or equivalent such as seeding with a suitable erosion control seed mix consisting of native grasses and forbs within seven (7) days of completion of grading.

Mitigation Monitoring & Maintenance

- E13. The property owner shall grant Ecology access to the mitigation areas for inspection during the ten (10) year monitoring period or until mitigation success has been achieved.
- E14. All plantings at mitigation sites shall be watered and otherwise maintained as necessary to meet performance standards.
- E15. When needed to meet the performance standards stated in the Wetland Mitigation Report, dead or dying plants shall be replaced during the first available planting season with the same species or a native plant alternative that is appropriate for the location. The species, numbers, and approximate locations of all replanted material shall be noted in the subsequent monitoring report.
- E16. Monitoring of the wetland mitigation sites will occur for a minimum of ten (10) years, with monitoring performed in years one (1), two (2), three (3), five (5), seven (7) and ten (10). Monitoring reports shall be submitted to Ecology's Mark Cline at the end of each monitoring year. Contingency measures and additional monitoring of the mitigation may be required by Ecology if wetland monitoring reveals that performance measures are not being met.
- E17. If at monitoring year ten (10), all required performance standards have not been met, then Ecology may require additional monitoring and/or additional wetland mitigation area. Monitoring reports shall be sent to Ecology's Federal Permit Manager.
- E18. Prior to implementing any contingency measures, the Applicant will consult with permitting agencies.

- E19. Any changes to the wetland monitoring requirements must be approved in writing by Ecology before they are incorporated into the plan or implemented on the ground.

F. Emergency/Contingency Measures:

- F1. The applicant shall develop a spill prevention and containment plan for this project and shall have spill cleanup materials available on site.
- F2. Any in-water work that is out of compliance with the provisions of this Order, 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 operator shall immediately take the following actions:
- F2a. Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
- F2b. Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-hour spill response team at (360) 407-6300, and within 24 hours to Ecology's Southwest Regional Office Permit Coordinator at (360) 407-6926.
- F2c. Submit a written report to Ecology within five (5) days 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, 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.

- 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, including wetlands.
- F4. 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.

G. Reporting Conditions

- G1. A detailed "as built" report shall be prepared after construction 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 wetland mitigation construction;
 - 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,

- an analysis of any changes to the mitigation plan that occurred during construction.
- Deed Restriction: Permanent protection of the wetland mitigation and preservation areas and buffers shall be recorded on the property deed for the Wetland Mitigation Sites. The deed shall clearly indicate that the wetland mitigation areas are "waters of the state".

A copy of the "as-built" report and drawing shall be sent to Ecology's Southwest Regional Office Attn.: Mark Cline at P.O. Box 47775, Olympia, WA 98504-7775, within 60 days of completing construction and planting, and in no case later than December 31, of the year that construction is completed.

- G2. Mitigation monitoring reports shall be submitted to Ecology's Mark Cline in monitoring years one (1), two (2), three (3), five (5), seven (7) and ten (10) as described in the mitigation plan: Wetland Mitigation Report At The Offsite Mitigation Location For the Tuxedo Junction, Battle Ground, WA dated June 9, 2004 and as revised on February 11, 2005; April 7, 2005; and June 3, 2005.

H. General Conditions:

- H1. 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.
- H2. This Order does not exempt the Applicant from, and is conditioned upon compliance with, other statutes and codes administered by federal, state, and local agencies.
- H3. The Applicant shall construct and operate the project in a manner consistent with the project description contained in the JARPA submitted October 22, 2004, the Public Notice for Certification, and the Wetland Mitigation Report At The Offsite Mitigation Location For the Tuxedo Junction, Battle Ground, WA dated June 9, 2004 and as revised on February 11, 2005; April 7, 2005; and June 3, 2005 or as otherwise approved by Ecology.
- H4. 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, or to ensure that conditions of this Order are being met.
- H5. Copies of this Order and all related permits, approvals, and documents shall be kept on the project site and readily available for reference by the project managers, construction managers and foremen, other employees and contractors of the Applicant, and state agency personnel.
- H6. Nothing in this Order waives Ecology's authority to issue additional administrative orders if Ecology determines 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 the public interest.

- H7. 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.

Appeal Process:

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology, within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

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

In addition, please send a copy of your appeal to:

Loree' Randall
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

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

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 17 AUGUST 2005 at Lacey, Washington


Perry J. Lund, Unit Supervisor
Shorelands and Environmental Assistance Program
Department of Ecology – Southwest Regional Office

Attachment # A
Water Quality Certification, Order # 2573
Statement of Understanding

I, _____, state that, I will be involved as an agent or contractor for Cornerstone Real Estate Group, LLC, in the construction Tuxedo Junction residential development, Phase 1. The construction will include construction of a 52-lot residential subdivision and associated infrastructure including streets and sidewalks on a 15-acre project site. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order #2573 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Company