



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

August 9, 2005

REGISTERED MAIL
RB 253 008 514 US

Mr. William L. and Ms. Mary F. Gallagher Dilley
12425 SW Bank Road
Vashon, WA 98070

RE: Water Quality Certification Number 2619 for Corps Public Notice 200400590 to construct a private road for access and development of a 9-lot single-family residential subdivision south of Westport and west of SR 105 Spur Road, in Grays Harbor County, Washington

Dear Mr. and Mrs. Dilley:

The public notice issued by U.S. Army Corps of Engineers on January 7, 2005, for proposed work in wetlands adjacent to the Pacific Ocean near Westport, Grays Harbor 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 permit, and Corps 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.

Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the applicant's determination that this work is consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

- This certification concurrence is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Lori Ochoa at (360) 407-6926. Written comments can be sent to her at the Department of Ecology, SWRO, PO Box 47775, Olympia, WA 98504-7775. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Paula Ehlers, Section Supervisor
Southwest Regional Office
Shorelands and Environmental Assistance Program

PE:LO:dn
Enclosure

cc: Jim Green, U.S. Army Corps of Engineers
Ms. Jayne Hewitt, Grays Harbor County



IN THE MATTER OF GRANTING) ORDER #2619
A WATER QUALITY) (Corps No. 200400590)
CERTIFICATION TO) To construct a private road for access and development
Mr. William L. and Ms. Mary) of a 9-lot single-family residential subdivision in wetlands
Gallagher Dilley) adjacent to the Pacific Ocean, near Westport, Grays
in accordance with 33 U.S.C. 1341) **Harbor County, Washington**
FWPCA § 401, RCW 90.48.260,)
RCW 90.48.120 and WAC 173-201A)

TO: Mr. William L. and Ms. Mary F. Gallagher Dilley
12425 Southwest Bank Road
Vashon, WA 98070

On January 7, 2005, a public notice for a proposed water quality certification from the State of Washington was distributed for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401). The proposed project involves the construction of a private road for access and development of a 9-lot single-family residential subdivision on a 9.2 acre parcel of land within wetlands adjacent to the Pacific Ocean. The site is located south of Westport and West of SR 105 Spur Road; the north half of Section 24, Township 16 North, Range 12 West, in Grays Harbor County, Washington.

For purposes of this Order, the term "Applicants" shall mean Mr. William L. and Ms. Mary F. Gallagher Dilley and their agents, assigns, and contractors.

AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, RCE 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:

In view of the foregoing and in accordance with 33 U.S.C. 1341, 90.48.260 RCW, 90.48.120 RCW and Chapter 173-201A WAC, certification is granted to the Applicants subject to the following conditions:

A. No Further Impairment of Existing Water Quality

- A1. Certification of this proposal does not authorize the Applicants to exceed applicable state water quality standards (173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) 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 Applicants 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.

C. Notification Conditions:

- C1. The Applicants shall notify Ecology's Southwest Regional Office Federal Permit Coordinator (Lori Ochoa) at (360) 407-6926, Fax (360) 407-6305, 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 the site.
- C2. The Applicants shall notify Ecology's Southwest Regional Office Federal Permit Coordinator within fourteen (14) days after completion of construction.
- C3. The Applicants 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 Applicants 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 Conditions

- D1. The project area shall be clearly marked/staked prior to construction to protect adjacent wetlands and their buffers 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.
- D2. Work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.
- D3. 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 through construction.
- D4. Periodic inspection and maintenance of all erosion control structures shall be conducted no less than every 7 days from the start of the project to 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.

- D5. All construction debris shall be properly disposed of on land so that it cannot cause water quality degradation to state waters.
- D6. 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.
- D7. 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.
- D8. 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.
- D9. 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.
- D10. 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.

E. Mitigation

- E1. Project mitigation shall be constructed and maintained as described in the *Wetland Mitigation Plan for Proposed 9-Lot Subdivision, Grays Harbor County*, Dated May 13, 2004 and as revised in communications received by Certified Letter from the Applicants dated April 26, 2005 and July 01, 2005.
- E2. Compensatory mitigation construction and installation shall occur prior to or concurrently with, project impacts to wetlands.
- E3. 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.
- E4. Prior to implementing any contingency measures, applicant will consult with permitting agencies.
- E5. Contingency measures and additional monitoring of the mitigation may be required by Ecology if wetland monitoring reveals that performance measures are not being met.
- E6. Any changes to the mitigation plan or monitoring requirements must be approved by Ecology before they are incorporated into the plan or implemented on the ground.
- E7. Deed Restriction: Permanent protection of the wetland mitigation area and buffers shall be recorded on the property deed for the Wetland Mitigation Site. The deed shall clearly indicate that the wetland mitigation area are "waters of the state". Documentation that this requirement has been fulfilled shall be provided to Ecology's Lori Ochoa as part of the "as-built" report.

F. Reporting Conditions

F1. The applicant shall submit a Temporary Erosion and Sediment Control (TESC) Plan 14 days prior to beginning construction. These plans shall include the following information:

a. TESC Plan

- name and phone number of person responsible for implementing plan;
- best management practices (BMP's) anticipated to be implemented;
- frequency of BMP inspections; and,
- contingency plan in the event of adverse weather condition or other foreseeable undesirable conditions.

F2. 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 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 area and buffers shall be recorded on the property deed for the Wetland Mitigation Site. The deed shall clearly indicate that the wetland mitigation area are "waters of the state".

A copy of the "as-built" report and drawings shall be sent to Ecology's Southwest Regional Office Attn: Lori Ochoa 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, 2006.

F3. Mitigation monitoring reports shall be submitted to Ecology by December 1 of each monitoring year for years 1, 3, 5, 7, and 10 and as described in the *Wetland Mitigation Plan for Proposed 9-Lot Subdivision, Grays Harbor County*, Dated May 13, 2004 and as revised in communications received by Certified Letter from the Applicants dated April 26, 2005 and July 01, 2005.

G. Emergency/Contingency Measures:

- G1. 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:
- G1a. Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
 - G1b. 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.
 - G1c. Submit a written report to Ecology within five 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 Applicants from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

- G2. 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.
- G3. 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. 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 Applicants from, and is conditioned upon compliance with, other statutes and codes administered by federal, state, and local agencies.
- H3. The Applicants shall construct and operate the project in a manner consistent with the project description contained in the Public Notice for certification or as otherwise approved by Ecology.
- H4. The Applicants shall reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency 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.
- H5. The Applicants shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.

- H6. 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 Applicants, and state agency personnel.
- H7. Nothing in this Order waives Ecology's authority to issue additional 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.
- H8. 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 8.9.05 at Lacey, Washington

A handwritten signature in cursive script, appearing to read "Paula Ehlers", written over a horizontal line.

Paula Ehlers, Manager
Shorelands and Environmental Assistance Program
Department of Ecology – Southwest Regional Office

Attachment # A
Water Quality Certification, Order #2619
Statement of Understanding

I, _____, state that, I will be involved as an agent or contractor for William L. and Mary F. Gallagher Dilley, in the construction of a private access road and development of the Sunset Crest Lane Residential Subdivision near Westport, Grays Harbor County. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order #2619 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Company