



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

December 29, 2005

REGISTERED MAIL
RR 359 893 916 US

William John Adams
9085 Fletcher Bay Road NE
Bainbridge Island, WA 98110

RE: Water Quality Certification Order #2977 and Coastal Zone Management consistency determination for U.S. Army Corps of Engineers (Corps) Reference #200500874 to fill wetlands to build a single-family residence on the property of Mr. William John Adams, Bainbridge Island, Kitsap County, Washington

Dear Mr. Adams:

On September 27, 2005, you 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 for the proposed placement of fill in wetlands to build a single-family residence. The U.S. Army Corps of Engineers issued a public notice on September 26, 2005, 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.

On October 17, 2005, you submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended, Ecology concurs with the applicant's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the Federal Water Pollution Control Act.



William John Adams
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If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in cursive script that reads "Sheila Hosner for Geoff Tallent".

Geoff Tallent
Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:rrp:cu

Enclosure

cc: Jim Green, U.S. Army Corps of Engineers
Larry Frazier, City of Bainbridge Island
Loree' Randall, Ecology
Penny Keys, Ecology

IN THE MATTER OF GRANTING A) ORDER #2977
WATER QUALITY) Corps Reference #200500874
CERTIFICATION TO) William John Adams, Bainbridge Island, Kitsap
Mr. William John Adams) 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: William John Adams
9085 Fletcher Bay Road NE
Bainbridge Island, WA 98110

On September 27, 2005, Mr. William John Adams submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice for a proposed water quality certification from Ecology was distributed by the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on September 26, 2005.

The proposed project entails building a house and garage with a maximum footprint of 1,300 square feet and an area of disturbance of up to 4,650 square feet. The project will fill 1,300 square feet of emergent wetlands and disturb up to 1,688 square feet of wetland buffer. Mitigation for the wetland fill will involve restoration of 1,980 square feet of wetland on the east side of the parcel. Mitigation will include excavating historic fill, planting native trees and shrubs, planting plugs of slough sedge in the understory, and overseeding with native wetland grasses, rushes, and/or sedges.

The proposed work will take place at Lot 7, Block 3, Division 3 of Fort Ward Estates (Tax Assessor No. 4148 003 007 0101) on Bainbridge Island, Kitsap County, Washington; located at the northwest corner of Robertson Avenue and Radio School Road in Section 11, Township 24 N., Range 2 E., WRIA #15 (Kitsap Watershed).

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. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 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 Mr. William John Adams and his 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, Shorelands and Environmental Assistance Program, 3190 160th Avenue SE, Bellevue, WA 98008. Any submittals shall be identified with Order #2977 and Corps Reference #200500874.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on September 27, 2005, and supplemental materials reviewed and approved by Ecology. 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 a modification to this Order is required.
- A5. This Order shall be withdrawn if the Corps does not issue a Section 404 permit. It shall also be withdrawn if the project is revised in such a manner or purpose that Ecology

determines the revised project requires a new authorization and public notice. The Applicant will then be required to reapply for a 401 Water Quality Certification by submitting a new JARPA to Ecology.

- 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. The Applicant shall ensure that all appropriate project engineers and contractors at the project site 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 before construction begins at the project or mitigation sites.
- A10. 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.
- 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

- B1. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 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 Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

C. Project Restoration

C1. Aquatic resource restoration shall be achieved through measures described in the following documents, except as modified by this Order:

- Wetland Analysis Report and Buffer Enhancement Plan for Lot 7, Block 3, Division 3, Fort Ward Estates, Bainbridge Island, Washington, revised June 23, 2005; and
- Addendum to Adams Wetland Mitigation Plan, Fort Ward Estates, Bainbridge Island, Washington, dated October 31, 2005.

C2. In addition to the above-referenced documents, the following requirements shall be conditions of this Order:

- a. Planting: Native trees, shrubs, and sedge plugs will be planted in areas shown on the Wetland Analysis Report and Buffer Enhancement Plan and will be overseeded in the wetland restoration area with a mix of native wetland grasses, rushes, and/or sedges.
- b. Timing: Planting of native trees and shrubs shall take place at the same time as or immediately after impacts on the wetland area to be filled. Planting shall be completed no later than March 31 of the first growing season after grading and filling.
- c. Record Drawings: Record drawings documenting the final design of the restoration project area shall be prepared when site construction and planting are completed. The drawings shall include the following:
 - Vicinity map showing site access;
 - Approximate final site grading showing areas of excavation, berms, ditches, culverts, etc.;
 - Drawings that clearly identify the boundaries of the restoration area;
 - The seed mixture used and the time of seeding;
 - Photographs of the area taken from permanent reference points;
 - Locations of photopoints; and
 - A description of any changes to the mitigation plan that occurred during construction.

A copy of the record drawings shall be sent to Richard Robohm at Ecology within 60 days of completing construction. Ecology approval of these drawings begins year "0" of the monitoring period.

- d. Permanent protection of the wetland restoration area shall be established by restrictive easements and recorded on the appropriate property deed. The deed shall clearly indicate that the wetland restoration area is "waters of the state." Documentation that this requirement has been fulfilled, including copies of permanent restrictive easements, shall be provided to Richard Robohm at Ecology at the same time as the as-built report.
- e. Field Supervision: The wetland mitigation grading and planting shall be field-inspected by a qualified wetland consultant to ensure that the project is constructed according to plans.
- f. Monitoring and Access: Ecology staff will coordinate with Mr. William John Adams or his consultants to arrange for site visits to evaluate the success of wetland mitigation, over a period of five years.
- g. Maintenance: Mr. William John Adams is responsible for management and maintenance of the wetland restoration site.

D. Stormwater Management

- D1. Applicant shall comply with the Stormwater Management Manual for Western Washington, February 2005 (Ecology Publication No. 05-10-30), or other approved manual.

E. Construction

- E1. Construction Stormwater and Erosion Control: Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (*e.g.*, a perimeter erosion control silt fence, etc.), shall be in place before starting clearing, filling, and grading work at the site, and shall also comply with all requirements of the applicable NPDES Construction Stormwater Permit.
- E2. 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.

- E3. 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.
- F. Emergency/Contingency Measures**
- F1. The Applicant shall develop a spill prevention and containment plan for all aspects of this project.
- F2. The facility shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- 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.
 - 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 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.
- F5. 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.
- F6. 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 or WDFW on what to do with them. Ecology or WDFW may require analyses of these samples before allowing the work to resume.

- F7. 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.

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 Washington Department of Fish and Wildlife (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. Notification Requirements

- H1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least 3 days prior to the start of construction, and within 14 days after completion of construction at the project site. Notification, referencing Order #2977, 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 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.

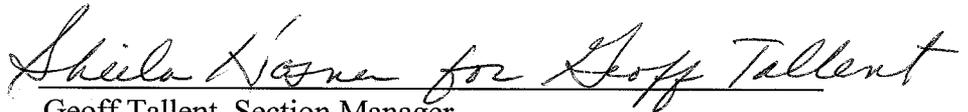
In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator
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 December 29, 2005 at Bellevue, Washington.


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

ATTACHMENT A

**William John Adams
Water Quality Certification Order #2977**

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

I have read and understand the conditions of Order #2977 Section 401 Water Quality Certification for the William John Adams Wetland Fill Project. I have also read and understand all permits, plans, documents, and approvals associated with the William John Adams Wetland Fill Project referenced in this Order.

Signature

Date

Title

Company