



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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August 17, 2021

Steve Sieber
TC Pursuit Services, Inc.
1300 SW Fifth Avenue, Suite 3350
Portland, OR 97201

Re: Administrative Order No. 20469 to permanently fill 4.9 acres, and to indirectly impact 0.22 acre, of non-federally regulated wetlands to construct Birtcher Business Center - Phase 2 ("Project 147") in Clark County, Washington

Dear Steve Sieber:

The Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application (JARPA) on February 23, 2021 (revised August 7, 2021), requesting an Administrative Order for proposed work in non-federally regulated wetlands. Ecology has determined that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Chapter 90.48 RCW and other applicable requirements of state law.

This approval is subject to the conditions contained in the enclosed Order. **You must familiarize yourself with and abide by the conditions in the Order, including all notification requirements.** If you have any questions, please contact Miranda Adams at 360-210-2783 or miranda.adams@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in blue ink, appearing to read "Perry J Lund".

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

Enclosure

ec: James Carsner, U.S. Army Corps of Engineers
ecyrefedpermits@ecy.wa.gov

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF THE REQUEST BY) ORDER No. 20469
STEVE SIEBER) Corps Ref. No. NWS-2021-22
FOR AN ADMINISTRATIVE ORDER TO)
CONDUCT WORK IN NON-FEDERALLY)
REGULATED WETLANDS)

TO: Steve Sieber
TC Pursuit Services, Inc.
1300 SW Fifth Avenue, Suite 3350
Portland, OR 97201

This is an Administrative Order requiring Steve Sieber to comply with Chapter 90.48 RCW and the rules and regulations of the Department of Ecology (Ecology) by taking certain actions, which are described below. RCW 90.48.120(1) authorizes Ecology to issue Administrative Orders requiring compliance whenever it determines that a person has violated or creates a substantial potential to violate any provision of Chapter 90.48 RCW.

On February 23, 2021, Ecology received a request to impact 4.9 acres of non-federally regulated wetlands and indirectly impact 0.22 acre of non-federally regulated wetlands, to construct Birtcher Business Center Phase 2 (“Project 147”) in Clark County. The U.S. Army Corps of Engineers (Corps) issued its jurisdictional determination on February 11, 2021. The site is located at the 6100 NE 147TH AVE, Vancouver, WA 98682, S11, T2N, R2E, W, Clark County, parcel 158888000, in the Salmon-Washougal WRIA (28).

The proposed development includes an 80,000 square-foot concrete tilt constructed warehouse and distribution facility. Site improvements include a large awning, covered roadway and loading zone, and asphalt and concrete pavements to serve approximately 540 vehicle stalls. The facility also includes a truck dock on the eastern side of the building to service seven loading docks.

This Administrative Order authorizes 4.9 acres of direct Category 3 wetland impacts and 0.22 acre of indirect Category 4 wetland impacts at the project location. Offsite mitigation for this proposal will consist of 3.53 acres of wetland creation/re-establishment, 26.7 acres of wetland enhancement, and all other actions as proposed in the *Preliminary Wetland Mitigation Plan – Updated (2nd)* dated July 27, 2021. The mitigation site is parcel ID 158597000.

For purposes of this Order, the term “Applicant” shall mean Steve Sieber and its agents, assigns, and contractors.

In view of the foregoing and in accordance with RCW 90.48.120(1):

IT IS ORDERED that the Applicant shall comply with the following:

A. General Conditions:

- A.1 The Applicant shall construct and operate the project in a manner consistent with the project description contained in the revised JARPA received by Ecology on August 7, 2021, or as otherwise approved by Ecology.
- A.2 For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest Regional Office, Attn: Miranda Adams, SEA Program, Vancouver Field Office, 12121 NE 99th St., Suite 2100, Vancouver, WA 98682 or via e-mail to fednotification@ecy.wa.gov with a cc to miranda.adams@ecy.wa.gov. All submittals shall reference Order No. 20469.
- A.3 The Applicant shall provide access to the project site and mitigation site upon request by Ecology.
- A.4 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 forepersons, and state and local government inspectors.
- A.5 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.
- A.6 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 of understanding (see Attachment A) that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. **The signed statement shall be provided to Ecology before construction begins at the project.**

B. Notification Requirements:

- B.1 The Applicant shall provide written notification to Ecology in accordance with condition A.2 above for the following activities:
 - a. At least ten (10) days prior to a pre-construction meeting.
 - b. At least ten (10) days prior to the onset of any work on site.
 - c. At least ten (10) days prior to the onset of in-water work, including wetlands.
 - d. At least seven (7) days within the start of impacts to wetlands.
 - e. At least ten (10) days prior to the onset of work at the wetland mitigation site.

- f. Immediately following a violation of the state water quality standards or any condition of this Order.
- g. Within fourteen (14) days after completion of construction.
- h. At least seven (7) days prior to completing each wetland mitigation site.

C. Wetland Compensatory Mitigation Conditions

- C. 1 The Applicant shall mitigate wetland impacts as described in the *Preliminary Wetland Mitigation Plan – Updated (2nd)* (hereafter called the “Mitigation Plan”) prepared by Olson Environmental, LLC, and dated July 27, 2021 (as revised and received on August 4, 2021), or as modified by this Order or revised and approved by Ecology.
- C. 2 The Applicant shall submit any changes to the Mitigation Plan in writing to Ecology (see A.2) for review and approval before implementing the changes.
- C. 3 The Applicant shall get review and written approval from Ecology of any plan changes required if problems arise during construction and planting of the wetland mitigation site.
- C. 4 The Applicant shall have a wetland professional at the wetland mitigation site to supervise during construction and planting.

Implementation

- C. 5 Unless otherwise approved by Ecology in writing, the Applicant shall begin the compensatory mitigation project before, or concurrently with impacting wetlands, or Ecology may require additional compensation to account for additional temporal loss of wetland functions.
- C. 6 If the mitigation site(s) cannot be completed within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of:
 - a) Birtcher Business Center – Phase 2 (“Project 147”).
 - b) Project 147 Mitigation Site.With the:
 - c) Reason for the delay.
 - d) Expected date of completion.
 - e) The Applicant shall submit an updated written notification every 12 months thereafter until the Birtcher Business Center – Phase 2 (“Project 147”) and the Project 147 Mitigation Site are complete.
- C. 7 The Applicant shall ensure that all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers at the wetland mitigation site and above the 100-year floodplain.
- C. 8 The Applicant shall ensure that no material is stockpiled within existing wetlands or their buffers at the wetland mitigation site(s) at any time, unless provided for in the Mitigation Plan.
- C. 9 The Applicant shall ensure that no construction debris is deposited within existing wetlands or their buffers at the wetland mitigation site(s) at any time, unless provided for in the Mitigation Plan.

- C. 10 The Applicant shall not use polyacrylamide at the mitigation site(s).
- C. 11 The Applicant shall not use hay or straw on exposed or disturbed soil at the mitigation site(s), unless otherwise approved by Ecology.
- C. 12 Aquatic herbicides can be used or applied only by certified applicators or persons under the direct supervision of a certified applicator, and only for those uses covered by the certified applicator's license category. Applicators are required to be permitted under Ecology's Noxious Weed Control Permit. Applicators shall comply with all conditions of the Noxious Weed Control Permit.
- C. 13 If weed-barrier fabric is used on the site, the Applicant shall use only permeable, fully biodegradable, non-toxic weed-barrier fabric for entire-site and/or individual plant weed control, unless otherwise approved by Ecology. If non-biodegradable plastic weed-barrier fabric is approved by Ecology, it shall be used only at the base of individual plants and shall be removed before it starts to break down, before it interferes with plant growth, or before the end of the monitoring period, whichever comes first.
- C. 14 If seeding is used as a best management practice for temporary erosion control, it must be a seed mix consisting of native, annual, non-invasive plant species, unless otherwise approved by Ecology.
- C. 15 The Applicant shall place signs along the mitigation areas' boundaries, including buffers, at intervals no greater than 200 feet to mark the areas as wetland mitigation site(s).
- C. 16 Upon completion of site-grading and prior to planting, the Applicant shall submit to Ecology written confirmation (email or signed letter, see A.2), from a surveyor or project engineer, that the finished grades are consistent with the approved Mitigation Plan or subsequent Ecology-approved plan changes. The confirmation should indicate how final elevations were confirmed.
- C. 17 After completing construction and planting of the mitigation sites(s), the Applicant shall submit to Ecology (see A.2) an as-built report, including plan sheets, documenting site conditions at Year Zero. The as-built report must:
 - a) Be submitted within 90 days of completing construction and planting.
 - b) Include the information listed in Attachment B (Information Required for As-built Reports).
 - c) Include documentation of the recorded legal mechanism required in Condition C.18.
- C. 18 The Applicant shall provide Ecology with documentation of a recorded restrictive covenant for the Project 147 Mitigation Site. The Applicant shall:
 - a) Request a restrictive covenant template from Ecology or use an appropriate alternative to develop a draft restrictive covenant.
 - b) Send the draft restrictive covenant to Ecology for review and approval.
 - c) Record the Ecology-approved restrictive covenant with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.

- d) Record the restrictive covenant with a figure that corresponds with the legal description showing the area that is being protected, a copy of this Order, and a site map showing the location of wetlands and their buffers that are being protected.
- e) Send a copy of the recorded restrictive covenant to Ecology with the As-Built Report (see C.17), unless otherwise approved by Ecology.

Monitoring and Maintenance

- C. 19 The Applicant shall water and maintain all mitigation site plantings so as to meet the Mitigation Plan's performance standards. If an irrigation system is installed, it shall be removed by the end of year three unless permission is received in writing from Ecology to allow the system to remain for a longer period.
- C. 20 The Applicant shall monitor the mitigation site for a minimum of 10 years.
- C. 21 The Applicant shall submit to Ecology (see A.2) monitoring reports documenting mitigation site conditions for years 1, 2, 3, 5, 7 and 10. The monitoring reports must:
 - a) Be submitted by December 31 of each monitoring year.
 - b) Include the information listed in Attachment C (Information Required for Monitoring Reports).
- C. 22 The Applicant shall implement the Mitigation Plan's contingency measures if the Mitigation Plan's goals, objectives, or performance standards are not being met.
- C. 23 Prior to implementing contingency measures not specified in the Mitigation Plan, the Applicant shall consult with and obtain written approval from Ecology for the changes.
- C. 24 When necessary to meet the performance standards, the Applicant shall replace dead or dying plants with the same species, or an appropriate native plant alternative, during the first available planting season and note species, numbers, and approximate locations of all replacement plants in the subsequent monitoring report.
- C. 25 For monitoring years five (5) and ten (10) the Applicant shall use the currently approved federal wetland delineation manual and appropriate regional supplement to delineate all compensatory wetlands and include delineation information (e.g. data sheets, maps, etc.) in the monitoring reports.
- C. 26 At the end of the monitoring period, the Applicant shall use the October 2014 or updated version of "Washington State Wetlands Rating System for Western Washington" to rate all wetlands and include the information in the monitoring report.
- C. 27 If the Applicant has not met all conditions, including performance standards, for the mitigation site at the end of the monitoring period, Ecology may require additional monitoring, additional mitigation, or both.
- C. 28 The Applicant's obligation to compensate for wetland impacts under Condition C.1 is not met until the applicant has received written notice from Ecology that the obligation is met.

D. Timing

This Order is valid until the Applicant meets all its requirements and the applicant has received written notification from Ecology to that effect.

Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW, Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

Miranda Adams
Department of Ecology
Vancouver Field Office
12121 NE 99th St., Suite 2100
Vancouver, WA 98682
360-210-2783
miranda.adams@ecy.wa.gov

MORE INFORMATION

- **Pollution Control Hearings Board Website**
<http://www.eluho.wa.gov/Board/PCHB>
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 90.48 RCW – Water Pollution Control**
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

DATED August 17, 2021 at Olympia, Washington.



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

Attachment A
Statement of Understanding
Administrative Order Conditions

Birtcher Business Center – Phase 2 (“Project 147”)
Steve Sieber, TC Pursuit Services, Inc.
Order No. 20469
and
Corps Reference No. NWS-2021-22

As the Applicant for the Birtcher Business Center – Phase 2, I have read and understand the conditions of Washington State Department of Ecology Order No. 20469, and any permits, plans, documents, and approvals referenced in the Order.

I have and will continue to ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand the conditions of this Order and any permits, plans, documents, and approvals referenced in the Order.

Signature

Date

Title

Phone

Company

Attachment B

Information Required for As-built Reports

Birtcher Business Center – Phase 2 (“Project 147”)
Ecology Order # 20469
And
Corps Reference # NWS-2021-22

Ecology requires the following information for as-built reports submitted under this Order. Ecology will accept additional information that may be required by other agencies.

Background Information

- 1) Project name.
- 2) Ecology Order number and the Corps reference number.
- 3) Name and contact information of the person preparing the as-built report. Also, if different from the person preparing the report, include the names of:
 - a) The applicant
 - b) The landowner
 - c) Wetland professional on site during construction of the mitigation site(s).
- 4) Date the report was produced.

Mitigation Project Information

- 5) Brief description of the **final** mitigation project with any changes from the approved plan made during construction. Include:
 - a) **Actual** acreage of Cowardin classes and mitigation type(s) (re-establishment, rehabilitation, creation, enhancement, preservation, upland, buffers).
 - b) Important dates, including:
 - i. Start of project construction.
 - ii. When work on the mitigation site began and ended.
 - iii. When different activities such as grading, removal of invasive plants, installing plants, and installing habitat features began and ended.
- 6) Description of any problems encountered and solutions implemented (with reasons for changes) during construction of the mitigation site(s).
- 7) List of any follow-up actions needed, with a schedule.
- 8) Vicinity map showing the geographic location of the site(s) with landmarks.
- 9) Mitigation site map(s), 8-1/2” x 11” or larger, showing the following:
 - a) Boundary of the site(s).
 - b) Topography (with a description of how elevations were determined).
 - c) Installed planting scheme (quantities, densities, sizes, and approximate locations of plants, as well as the source(s) of plant material).
 - d) Location of habitat features.
 - e) Location of permanent photo stations and any other photos taken.Include the month and year when each map was produced or revised. The site map(s) should reflect on-the-ground conditions after the site work is completed.
- 10) Photographs taken at permanent photo stations and other photographs, as needed. Photos must be dated and clearly indicate the direction from which each photo was taken. Photo pans are recommended.
- 11) A copy of any deed notifications, conservation easements, or other approved site protection mechanism.

Attachment C

Information Required for Monitoring Reports

Birtcher Business Center – Phase 2 (“Project 147”)
Ecology Order # 20469
And
Corps Reference # NWS-2021-22

Ecology requires the following information for monitoring reports submitted under this Order. Ecology will accept additional information that may be required by other agencies.

Background Information

- 1) Project name.
- 2) Ecology Order number and the Corps reference number.
- 3) Name and contact information of the person preparing the monitoring report. Also, if different from the person preparing the report, include the names of:
 - a) The applicant
 - b) The landowner
 - c) The party responsible for the monitoring activities.
- 4) Dates the monitoring data were collected.
- 5) Date the report was produced.

Mitigation Project Information

- 6) Brief description of the mitigation project, including acreage of Cowardin classes and mitigation type(s) (re-establishment, rehabilitation, creation, enhancement, preservation, upland, buffers).
- 7) Description of the monitoring approach and methods. For each performance standard being measured provide the following information:
 - a) Description of the sampling technique (e.g., monitoring point for soil or hydrology, line or point intercept method, ocular estimates in individually placed plots). If you are using a standardized technique, provide a reference for that method.
 - b) Size and shape of plots or transects.
 - c) Number of sampling locations and how you determined the number of sampling locations to use.
 - d) Percent of the mitigation area being sampled.
 - e) Locations of sampling (provide a map showing the locations), how you determined where to place the sampling locations (e.g., simple random sample), and whether they are permanent or temporary.
 - f) Schedule for sampling (how often and when).
 - g) Description of how the data was evaluated and analyzed.
- 8) Summary table(s) comparing performance standards with monitoring results and whether each standard has been met.

- 9) Discussion of how the monitoring data were used to determine whether the site(s) is meeting performance standards.
 - 10) Goals and objectives and a discussion of whether the project is progressing toward achieving them.
 - 11) Summary, including dates, of management actions implemented at the site(s), for example, maintenance and corrective actions.
 - 12) Summary of any difficulties or significant events that occurred on the site that may affect the success of the project.
 - 13) Specific recommendations for additional maintenance or corrective actions with a timetable.
 - 14) Photographs taken at permanent photo stations and other photographs, as needed. Photos must be dated and clearly indicate the direction the camera is facing. Photo pans are recommended.
 - 15) Vicinity map showing the geographic location of the site(s) with landmarks.
 - 16) Mitigation site map(s), 8-1/2" x 11" or larger, showing the following:
 - a) Boundary of the site(s).
 - b) Location of permanent photo stations and any other photos taken.
 - c) Data sampling locations, such as points, plots, or transects.
 - d) Approximate locations of any replanted vegetation.
 - e) Changes to site conditions since the last report, such as areas of regrading, a shift in the location of Cowardin classes or habitat features, or a change in water regime.
- Include the month and year when each map was produced or revised. The site map(s) should reflect on-the-ground conditions during the most recent monitoring year.