



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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August 31, 2021

Roger Foley
Elwood Holdings, LLC
PO Box 130
Brush Prairie, WA 98606

Re: Administrative Order No. 20703 to permanently fill/impact 0.35 of non-federally regulated wetlands to construct Creekview Pointe II Subdivision in Clark County, Washington

Dear Roger Foley:

The Department of Ecology (Ecology) received your revised Joint Aquatic Resources Permit Application (JARPA) on August 25, 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 via email at 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", is written over a circular blue ink stamp.

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. 20703
ROGER FOLEY)
FOR AN ADMINISTRATIVE ORDER TO) Corps Ref. No. #NWS-2021-313
CONDUCT WORK IN NON-FEDERALLY)
REGULATED WETLANDS)

TO: Roger Foley
Elwood Holdings, LLC
PO Box 130
Brush Prairie, WA 98606

This is an Administrative Order requiring Roger Foley 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.

Ecology received the revised Roger Foley Joint Aquatic Resources Permit Application (JARPA) on August 25, 2021 requesting an Administrative Order to impact 0.35 acres of non-federally regulated wetlands to construct Creekview Pointe II Subdivision in Clark County. The U.S. Army Corps of Engineers (Corps) issued its jurisdictional determination on July 30, 2021. The site is located at the 1300 Block of South Parkway Avenue, SW1/4, Section 2, T3N, R2E, Clark County, WRIA 17.

This Administrative Order authorizes 0.35 acres of Category III wetland impacts at the project location. Offsite mitigation for this proposal will consist of 0.945 acres of created/re-established or rehabilitated wetlands at the Remy Consolidated Mitigation Site located in Battle Ground, WA.

For purposes of this Order, the term "Applicant" shall mean Roger Foley 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:

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 25, 2021 or as otherwise approved by Ecology.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Vancouver Field Office, Attn: Miranda Adams, SEA Program, 12121 NE 99th St. Suite 2100, Vancouver, WA 98682 or via email to

fednotification@ecy.wa.gov and an ec to miranda.adams@ecy.wa.gov. Any submittals shall reference Order No. 20703.

3. The Applicant shall provide access to the project site and mitigation site upon request by Ecology.
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.
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.
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.

B. Notification Requirements:

1. The Applicant shall provide written notification to Ecology in accordance with condition A.2. at least three (3) days prior to the start of construction at the project and mitigation site.
2. The Applicant shall provide written notification to Ecology in accordance with condition A.2. within fourteen (14) days after completion of construction.
3. The Applicant shall provide written notification to Ecology in accordance with condition A.2. immediately following a violation of the state water quality standards or any condition of this Order.

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

C. Wetland Compensatory Mitigation Conditions:

1. The Applicant shall mitigate wetland impacts as described in the Creekview Pointe Mitigation Plan (hereafter called the "Mitigation Plan") prepared by Ecological Land Services, dated January 21, 2021, and updated June 30, 2021, or as modified by this Order or revised and approved by Ecology.
2. The Applicant shall submit any changes to the Mitigation Plan in writing to Ecology for review and approval before implementing the changes.

Implementation

3. The Applicant will purchase 0.945 acres at the Remy Consolidated Wetland Mitigation Site according to the “Mitigation Acreage and Purchase or Transfer Timing” section of the Mitigation Plan (pages 20 and 21). Within 60 days of the issuance of this Order, the Applicant shall submit the following to Ecology per Condition A.2:
 - a. Documentation that the Applicant has purchased 0.945 acres of the Remy site. This documentation shall include the legal description of the area within the Remy site used for mitigation for the Creekview Pointe II Subdivision.
 - b. A copy of the recorded notice that will be amended to the property title that identifies the legal portion of the site dedicated to the Creekview Pointe II Subdivision. Prior to submittal to Ecology, this notice shall be submitted to the Clark County Auditor’s office for filing, along with the Order number, the Order issuance date, and the amount of mitigation required by the Order.
4. Unless otherwise approved by Ecology in writing, the Applicant shall secure the required 0.945 acres at the Remy Consolidated Mitigation Site before impacting wetlands, or Ecology may require additional compensation to account for additional temporal loss of wetland functions.

Monitoring and Maintenance

5. The Applicant shall water and maintain all mitigation site plantings so as to meet the Mitigation Plan’s performance standards.
6. The Applicant shall submit monitoring reports to Ecology by December 31 of each monitoring year.
7. The Applicant shall implement the Mitigation Plan’s contingency measures if the Mitigation Plan’s goals, objectives, or performance standards are not being met.
8. Prior to implementing contingency measures not specified in the Mitigation Plan, the Applicant shall consult with and obtain written approval from Ecology for the contingency measures.
9. 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 current or upcoming planting season and note species, numbers, and approximate locations of all replacement plants in the subsequent monitoring report.
10. For monitoring year 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.
11. 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.

12. 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

1. This Order will expire when all its conditions have been met and upon receipt of a mitigation closeout letter from Ecology.

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

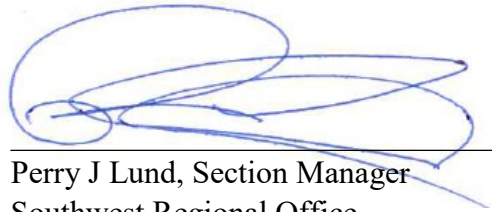
Please direct all questions about this Order to:

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 34.05 RCW – Administrative Procedure Act**
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **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 31, 2021, at Olympia, Washington.



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