



**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

PO Box 47600, Olympia, WA 98504-7600 • 360-407-6000

May 10, 2022

BDN, LLC  
Attn: Brad Nelson  
3011 Chandler Street  
Tacoma, WA 98409

**RE:** Section 401 Water Quality Certification Denial without Prejudice, **Order No. 20161**, U.S. Army Corps of Engineers (Corps) **Reference No. 201301268**, BDN Geoduck Farm – Smersh Parcel, Jefferson County, Washington

Dear Brad Nelson:

On May 11, 2021, the Department of Ecology (Ecology) received a request for a Section 401 Water Quality Certification for the above-referenced project. Ecology has one year from the Section 401 Water Quality Certification request to issue its decision.

At this time, Ecology has not received the necessary information to demonstrate that the project will meet state water quality laws. Therefore, pursuant to Section 401 of the Clean Water Act, Chapter 90.48 RCW, and Chapter 173-201A WAC, Ecology is denying without prejudice BDN, LLC request for a Section 401 Water Quality Certification. Receipt of a denial without prejudice does not preclude you from submitting a new request for a Section 401 Water Quality Certification at a later date.

If you have any questions about this decision, please contact Teresa Pucylowski by email at [Teresa.Pucylowski@ecy.wa.gov](mailto:Teresa.Pucylowski@ecy.wa.gov). The Enclosed Order may be appealed by following the procedures described in the Order.



BN Geoduck Farm – Smersh Parcel  
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Aquatics No. 135422  
May 10, 2022  
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Sincerely,



Brenden McFarland, Section Manager  
Environmental Review and Transportation Section  
Shorelands and Environmental Assistance Program

Enclosure

E-cc: Danette Guy, U.S. Army Corps of Engineers (Corps)  
Laura Hendricks, Coalition to Protect Puget Sound Habitat  
Amy van Saun, Center for Food Safety  
Jan Wold, Citizen  
Sur Corbett, Citizen  
Marilyn Showalter, Citizen  
Loree' Randall, Ecology  
Teresa Pucylowski, Ecology  
ecyrefedpermits@ecy.wa.gov  
Aquaculture-Reinforcement-Team@usace.army.mil



**IN THE MATTER OF DENYING SECTION 401 ) Order No. 20161**  
**WATER QUALITY CERTIFICATION TO ) Corps Reference No. 201301268**  
BDN, LLC in accordance with 33 U.S.C. 1341 ) BDN Geoduck Farm – Smersh Parcel,  
(FWPCA § 401), RCW 90.48.260 and Chapter ) Jefferson County, Washington  
173-201A WAC )

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On May 11, 2021, the Department of Ecology (Ecology) received a request for a Section 401 Water Quality Certification (WQC) via a Joint Aquatic Resources Permit Application (JARPA) for the above-referenced project. Ecology has one year from the receipt of the request for a WQC to issue its decision.

On April 14, May 2 and May 3, 2022, Ecology communicated via phone and email the need for a new eelgrass survey for the project area and a State Environmental Policy Act (SEPA) threshold determination from Jefferson County.

Without the eelgrass survey, Ecology does not have the information needed to demonstrate that the project will maintain and protect existing eelgrass and other designated uses to meet state water quality laws<sup>1</sup>. Additionally, SEPA<sup>2</sup> has not been completed, as required by state law. With the statutory deadline approaching, Ecology must deny the WQC at this time. Therefore, pursuant to Section 401 of the Clean Water Act, Chapter 90.48 RCW and Chapter 173-201A WAC, the request for a WQC for the BDN Geoduck Farm – Smersh Parcel is denied without prejudice.

Receipt of a denial without prejudice does not preclude you from submitting the information identified above with a new request for a WQC at a later date.

#### **YOUR RIGHT TO APPEAL**

You have a right to appeal this Denial Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Denial 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 all of the following within 30 days of the date of receipt of this Order:

<sup>1</sup> Chapter 90.48 RCW, Chapter 173-201A WAC, WAC 173-201A-310

<sup>2</sup> Chapter 43.21C, Chapter 173-802, Chapter 197-11

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- File your appeal and a copy of this Denial 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 Denial 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
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel RD SW, Suite 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

#### SIGNATURE



May 10, 2022

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Brenden McFarland, Section Manager  
Environmental Review and Transportation Section  
Shorelands and Environmental Assistance Program

Date