



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Region Office
PO Box 330316, Shoreline, WA 98133-9716 • 206-594-0000

July 19, 2022

Blue Fern Development, LLC
ATTN: Michelle Branley
1414 Market Street, #200
Kirkland, WA 98033

Re: Water Quality Certification Order No. **21233** for Corps Reference No. **NWS-2020-0769**,
Blue Fern Development Canopy Project, City of Renton, King County, Washington

Dear Michelle Branley:

On May 31, 2022, Blue Fern Development, LLC submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Blue Fern Development Canopy Project, City of Renton, King County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the Water Quality Certification Request and supplemental documents 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 Water Quality Certification Order (WQC Order).

Please ensure that anyone doing work under this WQC Order has read, is familiar with, and is able to follow all of the provisions within the attached WQC Order.

If you have any questions about this decision, please contact Neil Molstad at (425) 389-5549 or by email at Neil.Molstad@ecy.wa.gov. The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

Joe Burcar, Section Manager
Shorelands and Environmental Assistance Program
Northwest Regional Office

Sent via email: michelle@bluefern.com

Blue Fern Development Canopy Project
Aquatics No. 139459, Corps No. NWS-2020-0769
July 19, 2022
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E-cc: Kelly Werdick, U.S. Army Corps of Engineers
Alia Richardson, Wetland Resources, Inc.
Holli Heavrin, Core Design Inc.
Neil Molstad, Department of Ecology
Rebekah Padgett, Department of Ecology
Loree' Randall, Department of Ecology
ECYREFEDPERMITS@ecy.wa.gov – Aquatics No. 139459



**IN THE MATTER OF GRANTING A
WATER QUALITY CERTIFICATION TO**
Blue Fern Development, LLC
pursuant to 33 U.S.C. 1341 (FWPCA §
401), RCW 90.48.120, RCW 90.48.260
and Chapter 173-201A WAC

) **ORDER No. 21233**
) **Corps Reference No. NWS-2020-0769**
) *Blue Fern Development Canopy Project, Impacts*
) *to a wetland located within the May Creek sub-*
) *basin of the Cedar River/Lake Washington*
) *watershed, City of Renton, King County,*
Washington

Blue Fern Development, LLC
Attn: Michelle Branley
1414 Market Street, #200
Kirkland, WA 98033

On May 31, 2022, Blue Fern Development, LLC submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Blue Fern Development Canopy Project, located in the City of Renton, King County, Washington. The following required processing dates are referenced below:

- On April 28, 2022, Blue Fern Development, LLC submitted a pre-filing meeting request for the Canopy Project.
- On April 28, 2022, the U.S. Army Corps of Engineers (Corps) sent an email notification to Ecology that they are reviewing the project for authorization under Nationwide Permit No. 29. Since the project is a subdivision, individual Section 401 WQC is required from Ecology.
- On May 27, 2022, a pre-filing meeting was held. Attending the meeting was Ecology, a Blue Fern Development LLC representative, and wetland and civil engineering consultants.
- On June 9, 2022, Blue Fern Development, LLC submitted additional information, and the Department of Ecology (Ecology) considered the request valid on this date.
- On June 16, 2022, Ecology issued a public notice for the project.

This project proposes to develop approximately 8.4 acres of the subject property with a 57 lot residential subdivision with associated open space, utilities, and infrastructure. As a result of required frontage improvements and stormwater infrastructure, the project will impact 1,585 square feet of Category IV wetland.

The project site is located directly east of Lincoln Avenue NE and north of NE 40th Street (Parcels 3345700015, 3345700016, 3345700017, 3345700018, and 3345700020) in the City of Renton, King County, Washington, Section 32, Township 24N., Range 05E. The project will impact a wetland located within the May Creek sub-basin in Water Resource Inventory Area (WRIA) 8 (Cedar-Sammamish).

With this Order, Ecology is granting Blue Fern Development, LLC's request for a Section 401 Water Quality Certification for the Blue Fern Development Canopy project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on May 31, 2022, and the following supporting documentation:

1. Erosion and Sediment Control plan, received June 9, 2022.

Based on the information submitted, Ecology has determined that the discharge from the project will comply with state water quality requirements. Prior to undertaking any changes that materially alter the project, Blue Fern Development, LLC must contact Ecology to determine whether a new Section 401 Water Quality Certification is required.

Issuance of this Section 401 Water Quality Certification for this proposal does not authorize Blue Fern Development, LLC to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC), or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this Section 401 Water Quality Certification absolves the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

Special Conditions: Wetland Compensatory Mitigation

1. Blue Fern Development, LLC shall mitigate wetland impacts as described in Section 8 of the *Mitigation Plan for Blue Fern Development – Canopy, Revision #1* (hereafter called the "Mitigation Plan") dated May 31, 2022 and submitted to Ecology on that date.
 - *Justification - Alteration of water quality necessitates the use of mitigation as a method of controlling pollution. When mitigation is provided, the impacts are not considered significant enough to water quality, at least in the long-term. The water quality standards, along with mitigation, protect wetlands as well as permitting some level of degradation where unavoidable or necessary.*
 - *Citation - 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A-260 (3)(i-ii) WAC, Chapter 173-201A-300 WAC, and Chapter 173-225-010 WAC.*
2. Blue Fern Development, LLC shall submit any changes to the Mitigation Plan in writing to Ecology for review before implementing the changes.
 - *Justification - When mitigation is provided, the water quality impacts are offset and not considered significant, at least in the long-term. Changes to impacts or mitigation must be considered when evaluating mitigation adequacy.*

- *Citation - 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter [47.85.040](#) RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A-260 (3)(i-ii) WAC, Chapter 173-201A-300 WAC, and Chapter 173-225-010 WAC.*
3. Blue Fern Development, LLC shall obtain a Statement of Sale from the Sponsor as documentation of purchase of 2.4 In-Lieu Fee mitigation credits to compensate for the project's wetland impacts, as described in the Mitigation Plan. The Project Proponent shall submit a copy of the Statement of Sale to Ecology before impacting wetlands. Documentation from the Sponsor shall include:
- a. Ecology's Order number,
 - b. Order issuance date,
 - c. Description of mitigation credits purchased,
 - d. Signatures from the Sponsor and the Applicant.
- *Justification - This condition is necessary to ensure the compensatory mitigation was actually provided by the in-lieu-fee program.*
 - *Citation – 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, WAC 173-201A-260 (3)(i-ii) and WAC 173-201A-300.*
4. Unless otherwise authorized by this Order, Blue Fern Development, LLC shall complete the purchase of credits before impacting wetlands or Ecology could use its discretionary authority to require Blue Fern Development, LLC to provide additional compensation to account for additional temporal loss of wetland functions.
- *Justification - Mitigation that is not emplaced concurrent with impacts will result in degradation of existing beneficial uses of the wetlands affected by the proposed action through temporal loss of functions.*
 - *Citation - 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter [47.85.040](#) RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A-260 (3)(i-ii) WAC, Chapter 173-201A-300, and Chapter 173-225-010 WAC.*
5. If Blue Fern Development, LLC has not purchased credits within 13 months of the date of this Order, Blue Fern Development, LLC shall inform Ecology, in writing, of the status of
- a. The Blue Fern Development Canopy Project

b. When ILF credits will be purchased

With the:

c. Reason for the delay

d. Expected date of completion

Blue Fern Development, LLC shall submit an updated written notification every 12 months thereafter until the Blue Fern Development Canopy Project is complete and the required credits are purchased.

- *Justification - Mitigation that is not emplaced concurrent with impacts will result in degradation of existing beneficial uses of the wetlands affected by the proposed action through temporal loss of functions.*
- *Citation - 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A-260 (3)(i-ii) WAC, Chapter 173-201A-300 WAC, Chapter 173-225-010 WAC.*

6. Blue Fern Development, LLC's obligation to compensate for wetland impacts is not met until Blue Fern Development, LLC has received written notice from Ecology that the obligation is met.

- *Justification - If the mitigation site is not meeting all compensatory mitigation conditions then the water quality impacts will not be offset by the mitigation.*
- *Citation – 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 47.85.040 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A-260 (3)(i-ii) WAC, Chapter 173-201A-300 WAC, and Chapter 173-225-010 WAC.*

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, this WQC is granted to Blue Fern Development, LLC for the Blue Fern Development Canopy Project.

This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues a Department of the Army (DA) permit for this project. Order No. **21233** will remain valid for the duration of the associated DA permit. Blue Fern Development, LLC should send a copy of the final DA permit to fednotification@ecy.wa.gov within two weeks of receiving it.

Your right to appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt. The appeal process is governed by RCW 43.21B and WAC 371-08. "Date of receipt" is defined in RCW 43.21B.001(2). More information is available at <https://eluh.wa.gov/content/11>.

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

- File your notice of appeal and a copy of this Order with the PCHB (see filing options below). "Filing" means actual receipt by the PCHB during regular business hours as defined in WAC 371-08-305 and -335. "Notice of appeal" is defined in WAC 371-08-340.
- Serve a copy of your notice of appeal and this Order on the Department of 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 RCW 43.21B and WAC 371-08.

Filing an appeal with the PCHB:

For the most current information regarding filing with the PCHB, visit:
<https://eluh.wa.gov/content/11>

Filing by mail

Mailing Address:

Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

Filing in person (or by certified mail/courier)

Street Address:

Pollution Control Hearings Board
1111 Israel RD SW
STE 301
Tumwater, WA 98501

Filing electronically

Email address:

pchb-shbappeals@eluh.wa.gov

Serving a copy of the appeal on Ecology:

Electronic copies of appeals are not accepted at the Department of Ecology per WAC 371-08-305(10).

Filing by mail

Mailing Address:

Department of Ecology
Attn: Appeals Processing Desk
PO Box 47608
Olympia, WA 98504-7608

Filing in person (or by certified mail/courier)

Street Address:

Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

CONTACT INFORMATION

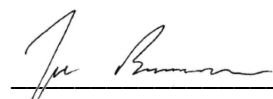
Please direct all questions about this Order to:

Neil Molstad
Department of Ecology, Northwest Region Office
PO Box 330316
Shoreline, WA 98133-9716
neil.molstad@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 173.204 WAC – Sediment Management Standards**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>
- **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>
- **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>

SIGNATURE



Joe Burcar, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology – Northwest Region Office

{7/19/2022}

Date